

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 WEST PALM BEACH DIVISION

4 CASE NO. 20-md-02924-ROSENBERG

5 **IN RE: ZANTAC (RANITIDINE)** .
6 **PRODUCTS LIABILITY** . West Palm Beach, FL
7 **LITIGATION.** . December 18, 2020
8 .
9 .

10 STATUS CONFERENCE (through Zoom)
11 BEFORE THE HONORABLE ROBIN L. ROSENBERG
12 UNITED STATES DISTRICT JUDGE

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1 THE COURT: Okay. Good morning, everyone. Welcome to
2 the status conference in the Zantac MDL.

3 We are going to cover a number of topics and I'm
4 pleased that we have as many attendees as I can see who are
5 here with us today.

6 It has been a little while since we had our last
7 status conference. In part, that was due to preparation on
8 both the Court's part as well as the parties' part in preparing
9 for what was two extensive days this week, Monday and Tuesday,
10 of hearings on the many Motions to Dismiss that were presented
11 to the Court. So, in light of that and the work that was done
12 to prepare for those, we perhaps missed one of our normally
13 scheduled status conferences.

14 The Court is looking to, in the future, as we turn the
15 corner into 2021, to hold the status conferences regularly on a
16 monthly basis. The Court feels that they are important not
17 only for the parties to be able to give the Court an update on
18 the status of how various aspects of the case are going, but
19 also for many of the other participants here today who don't
20 necessarily have the benefit of knowing day in and day out
21 precisely what is going on in the litigation.

22 So, it is important for the Court that everyone who
23 wants to be informed, is informed to the best of our collective
24 abilities to keep everyone informed as to what is going on.

25 Of course, the Court does have the website, as most of

1 you should know, and if not, you can confer with the coleads.
2 And on that website for the Zantac litigation all of the
3 pretrial orders are listed to make it easy so you don't need to
4 get into the docket because it is quite hefty at this point,
5 and the pretrial orders. Which are numbering in the 50's at
6 this point, I believe maybe 57, are all there, and that also is
7 a good road map to understand procedurally where we are in the
8 litigation.

9 So, without any further ado, I look forward to hearing
10 from a number of you today, and thank you for presenting the
11 agenda on the issues that you would like to present to the
12 Court.

13 It is my understanding that the first issue that we
14 want to discuss and have presentation on is the census and
15 registry.

16 I know since the last status conference we have moved
17 into the provision of information by the Defendants which was
18 to enable the Plaintiffs to begin narrowing their allegations
19 in the CPFs, and the short form complaints.

20 So, I would like to call upon counsel who will be
21 presenting to the Court on the issue of the census and the
22 registry, if you could put your videos on and unmute yourself,
23 but perhaps when you are not speaking, keep your mute on so we
24 can ensure that we don't have any static or any issues with
25 connectivity.

1 When everybody is on -- it looks like -- now, there
2 is -- I just want to say, I'm seeing Stephanie Coleman's name,
3 but not a picture and a mute. So, I don't know if Stephanie
4 Coleman is part of the presentation or not, but perhaps --

5 *MS. COLEMAN:* No, your Honor, I am not.

6 *THE COURT:* Okay. I think you need to turn something
7 off so you are not showing on the screen, I am not sure what it
8 is, whether it is on your end or my end. There we go.

9 It was confusing whether you were one of the
10 presenters or not, maybe it just had something to do with the
11 format on the computer screen. I don't see your name on the
12 screen anymore, at least on my screen, so thank you for
13 addressing that.

14 With that, if I could have all counsel state your
15 appearance for the record on the issue of census and registry.
16 I just remind everyone that before you speak, if you could
17 state your name for the benefit of Ms. Stipes who is
18 recording -- transcribing this proceeding today.

19 *MR. PULASKI:* Thank you, your Honor. Adam Pulaski for
20 the Plaintiffs.

21 *MS. BOLDT:* Paige Boldt for the Plaintiffs.

22 *MR. PETROSINELLI:* Good morning, your Honor, Joe
23 Petrosinelli, one of the Defense coleads.

24 *MS. DAILY:* Good morning, your Honor, Hope Daily also
25 for the Defense, I am representing Pfizer.

1 *THE COURT:* Good morning to all of you. Thank you for
2 being here and thank you for offering to present on a very
3 important topic, and a core part of this litigation, which is
4 the census and the registry.

5 So, I will turn it over to each of you to provide me
6 with the information that you think is pertinent for the Court
7 to understand. Of course, the Court follows this issue very
8 closely even between these status conferences, but this is a
9 good opportunity for a check in, and as I indicated, for the
10 many others who are here today, for their benefit as well.

11 *MR. PULASKI:* Thank you, Judge. Joe, if it is okay,
12 we will jump in.

13 I am going to have Ms. Boldt speak first and kind of
14 give you an overall summary, and then I will jump in after and
15 go into some specific details on some issues, and then we will
16 hear from the Defense and we can have a discussion.

17 *THE COURT:* Okay. Thank you so much.

18 *MS. BOLDT:* Good morning, your Honor, this is Paige
19 Boldt for the Plaintiffs. My job is to give you an update on
20 registry and kind of how we expect the data and analytics
21 portion to play in the next steps in this litigation.

22 As your Honor is aware, one of the complexities of
23 this MDL is the sheer number of Defendants who have
24 manufactured Zantac and Ranitidine over the years, and the
25 Plaintiffs were able to receive additional information from

1 these Defendants through PTO 50 and phase one and two letters
2 that we have been able to condense this information to provide
3 to LMI and use that data and analytics to compare with what
4 Plaintiffs have submitted in the Census Plus forms.

5 Plaintiffs' counsel have started to receive some of
6 what we refer to as Defendant mapping, which is that comparison
7 data between the CPF and information that the generics and
8 other Defendants provided to us. This information is being
9 refined now and over the next 60 days we expect to have a
10 really better understanding of the percentage of the generics'
11 involvement and specifically which ones, as well as the brand
12 manufacturers.

13 In general, the Census Plus form reporting information
14 is starting to be available as well. This is a wealth of
15 information provided to leadership on both sides. Maybe, as an
16 LDC member, I may not be able to speak with the most authority
17 on this, but I think it's fair to say that both sides are in a
18 far better position than most MDLs to address this bellwether
19 process as we go into May and those conversations because of
20 the census and registry process and data being gathered.

21 Rather than leadership diving into their own
22 inventory, we really get a chance to see the full scope of what
23 representatives and Plaintiffs are out there so that we can
24 kind of narrow in on the Plaintiff who would be most
25 representative of this entire group.

1 Some things we are well aware of, the fact that larger
2 states in populations, like California, Texas, and Florida, are
3 going to have a lot of Plaintiffs from those states in this
4 registry. We are also seeing a lot of southern states, like
5 Georgia, Alabama, and Louisiana that are highly representative
6 of this group, as well as getting to narrow in on the types of
7 products used and the cancers involved.

8 In addition to being a member of the LDC, I am also a
9 member of our bellwether committee and we are reviewing this
10 data and reaching out to Plaintiffs' Bar to make sure they are
11 able to utilize this process and the data that's coming in, and
12 making that as smooth as possible.

13 Thanks to your Honor's designation of the LDC, I am
14 able to work on a couple of other committees, including the
15 science committee where we are using this documentation to
16 provide to our experts, as well as the deposition committee
17 where I was able to help negotiate with the protocol and
18 participate with the first and only deposition that we have had
19 so far. Obviously, that committee is going to hone in on more
20 dates as we move forward.

21 Again, thank you, your Honor, for the opportunity to
22 be a part of the Leadership Development Committee and we're
23 looking forward to working on this data information as we move
24 forward, too.

25 *THE COURT:* Thank you very much, Ms. Boldt. It is a

1 real pleasure to be able to see members such as yourself of the
2 LDC an active part of the litigation. I have commented on it
3 before, and I will continue to comment on it.

4 I believe that it is very, very important that
5 attorneys who are either younger or newer in terms of
6 experience with MDLs be able to get exposure and participation,
7 and this process really wouldn't be possible without the
8 mentorship and leadership of the more senior experienced leads
9 who have taken it upon themselves, in addition to all of the
10 heavy lifting that is involved in this pretty much 24/7
11 litigation, to also mentor and to share their knowledge and
12 wisdom with younger and/or less experienced attorneys.

13 So, I am just so pleased, and I have told leadership
14 that before, and I will continue to say that our LDC members
15 and others who are newer to MDL litigation have a chance from
16 the very beginning to be a part of this, to contribute, and to
17 be able to present and interact with the Court.

18 So, thank you for the presentation and thank you again
19 to all of the attorneys who have seen fit to include and foster
20 a mentorship arrangement and relationship with the younger and
21 less experienced attorneys. So, thank you.

22 *MR. PULASKI:* Thank you, Judge. Let me just echo your
23 sentiments and thank Ms. Boldt for her enormous contribution so
24 far to the litigation and all our LDC members who play an
25 integral role with us, just as any other attorney on the PSC,

1 in moving this litigation forward. I appreciate that and I
2 appreciate the LDC committee.

3 Let me get into a couple of different specifics that
4 may bring some -- shed some light on the Court and others
5 listening in.

6 We have been working very closely with the Defense and
7 with Mr. Petrosinelli in particular and Special Master Dodge,
8 along with LMI and others, to ensure that this process, which
9 is growing in nature, is useful for both the Plaintiff and
10 Defense and the Court.

11 To date, we have 63,043 claimants registered, that
12 number is growing. My understanding is there is another 7,000
13 that should be registered within the next 30 days. In addition
14 to the Census Plus form, which I will get into in just a
15 minute, and I will try to keep this brief, we have expanded the
16 census and registry process to include this Defendant mapping
17 which leads to the dismissal process for short form complaints
18 and other production from retailers and from generics that is
19 all encompassing now in the registry process, which is now
20 becoming more and more important to the litigation.

21 So, first, let me talk a little bit about the PTO 50
22 and 52 information that has been coming in from the Defendants,
23 from the generics in particular. As Ms. Boldt mentioned, there
24 were phase one and phase two letters that gave us information
25 as to what products each manufacturer sold, when they sold it,

1 the dosage, the form, and everything else possible we could put
2 together.

3 We have created a spreadsheet that is now 165 rows
4 deep, 16 columns long, and 2,640 fields of data that will allow
5 the Plaintiffs' Bar and the Defense to understand in each
6 particular short form complaint which manufacturers, which
7 brand manufacturers, which generic manufacturers should be
8 named based on the answers in a short form complaint and the
9 Census Plus form by a Plaintiff.

10 So, this is leading to a process in which we are
11 working hand in hand with the Defense on now being able to
12 dismiss certain Defendants out of short form complaints.
13 Originally, on November 1st, we were presented from Terry Henry
14 a list of 77 complaints where dismissals needed to occur based
15 on the information that was provided. 90 plus percent of those
16 have been executed and finalized.

17 On December 1st, there was another list of another 70
18 plus short form complaints that the Defense had noted where
19 dismissals should be occurring based on information we have now
20 been provided. Those are being taken care of as well.

21 So, all in all, we have a process in place where,
22 because of the unwieldiness of a litigation with a hundred
23 different Defendants is becoming very organized and now allows
24 both Plaintiffs and Defense again the opportunity to understand
25 which Defendants should be involved based on each particular

1 Plaintiff's usage, so that we know who they may or may not have
2 purchased a product from.

3 *THE COURT:* Mr. Pulaski, I am just going to remind you
4 to speak slowly for the benefit of getting everything down and
5 also making sure everybody on Zoom -- as effective a platform
6 as it is, I know sometimes it can be difficult to hear
7 everyone, so I want to ensure that everyone is hearing you
8 because this is very, very important.

9 And I will just take a moment, Judge Reinhart has been
10 with us, but I did ask him to turn his screen on, Magistrate
11 Judge Reinhart, as he is obviously actively involved in the
12 litigation as well, and may have some comments at some point.
13 So, he has turned his screen on. You may proceed.

14 *MR. PULASKI:* Correct. Welcome, Magistrate Judge
15 Reinhart. I did not see your video before, but welcome.

16 *THE MAGISTRATE JUDGE:* Good morning.

17 *MR. PULASKI:* In addition to this process which allows
18 for dismissals, as discussed, there are over 63,000 Census Plus
19 forms that have been submitted. We are working with Mr.
20 Petrosinelli and Special Master Dodge and LMI on a deficiency
21 process in order to cure deficiencies in the Census Plus forms.

22 We are working through some challenging technological
23 issues, but for that, I can assure this Court and yourself and
24 Judge Reinhart that the Plaintiffs have been beyond diligent in
25 filling out the forms and getting data submitted to LMI and so

1 that the Defense will have access to the data as well as the
2 Plaintiffs.

3 Once we get through this, and we are getting to the
4 next phase of our registry process, once we get through this
5 curing period, and we have a January 31st deadline to cure this
6 first group of 40,000 plus deficiencies, we will then be
7 venturing into what I will call the second phase of the
8 registry process, which to the Plaintiffs' Bar, and I believe
9 to the Defense Bar as well, is very important, that is the
10 process of, one, the production of information by the retailers
11 of their prescription record information. That will begin to
12 occur on a rolling basis in January.

13 And in addition to that, the production of information
14 for their loyalty program records will allow for proof of use
15 for the Plaintiffs, for both the Defense and the Plaintiffs and
16 for this Court.

17 In addition to that, Lexitas, who is our chosen third
18 party vendor for record retrieval, in January will begin the
19 process of ordering both proof of use records and prescription
20 records from treating physicians based on the data from the
21 Census Plus forms and in conjunction with our agreement with
22 the Defense to split costs on those records, and that process
23 will begin in January as well.

24 So, I think I have gone over the dismissal process,
25 the deficiency process, and everything else that we are working

1 towards on the registry. I am happy about the way things are
2 moving forward. Again, there have been bumps in the road with
3 some technology issues, but other than that, Mr. Petrosinelli
4 and I have been able to work amazingly well together to move
5 this along, and I don't think there has been a problem so far
6 that we couldn't figure out on our own.

7 *THE COURT:* Thank you very much, Mr. Pulaski. I
8 appreciate that update and I know how hard you are working on
9 the registry, and I appreciate that.

10 *MR. PULASKI:* Thank you, Judge.

11 *MR. PETROSINELLI:* Your Honor, good morning, Joe
12 Petrosinelli here for the Defendants. Nice to see you again.
13 I also want to thank Ms. Stipes for her third day this week of
14 transcription, which has been a marathon week.

15 I thought, your Honor, I wanted to turn it over first
16 to Hope Daily, my colleague at Williams and Connolly, and a
17 member of our LDC who has worked with me on the census and
18 registry to perhaps introduce herself because she hasn't been
19 before the Court yet, and then give you a bit of an update on
20 what she has been doing on the census.

21 *THE COURT:* Terrific. Good morning, Ms. Daily,
22 welcome. Good to see you.

23 *MS. DAILY:* Good morning, you Honor, Hope Daily for
24 the Defense. I want to start out by echoing Ms. Boldt's
25 sentiments thanking the Court for its support of the young

1 attorneys in this litigation and its commitment to their
2 development. I have the privilege of serving on the Leadership
3 Development Committee and I have already had many opportunities
4 to develop my skills as an attorney so far. I have worked very
5 closely with Mr. Petrosinelli and several LDC members from
6 other firms on the census process. I have also worked on state
7 and Federal coordination defending Pfizer in the state court
8 cases, and more recently, preparing for depositions.

9 It has been a very valuable learning experience so
10 far, and I look forward to the many additional opportunities
11 that the case will present.

12 Today I will give the Court just a brief update on the
13 census process, specifically the deficiency process, and the
14 process outlined in PTOs 15 and 38 is well underway for the
15 filed Plaintiffs.

16 LMI has sent out two rounds of deficiency and
17 delinquency notices to filed Plaintiffs. The first round of
18 notices were sent out back in August which included about 25
19 delinquency notices and 250 deficiency notices.

20 Then, as outlined in PTO 38, those Plaintiffs then had
21 an opportunity to correct their census platforms. After that
22 opportunity -- that period to cure their forms expired, there
23 were no delinquencies remaining, but there were still several
24 important deficiencies, so we met and conferred with
25 Plaintiffs' counsel about those and we got it down to a list of

1 eight Plaintiffs who still had important deficiencies, and for
2 whom no explanation had been provided for those deficiencies.
3 So, we filed Motions to Dismiss for those eight plaintiff's --

4 *THE COURT:* Hold on, we just had one little
5 technology -- so, let me remind everybody that if you are not
6 speaking, that your mute is on, that is, turn your mute button
7 on just so there is nothing that interferes with the speaker.
8 Maybe someone inadvertently turned something on because I heard
9 a little static.

10 Ms. Daily, just go back to where you said, so there
11 were eight Plaintiffs.

12 *MS. DAILY:* Yes. So, we filed Motions to Dismiss for
13 those eight Plaintiffs and we subsequently withdrew five of
14 those motions because the Plaintiffs corrected their forms. As
15 to the other three motions, those Plaintiffs did not file
16 responses. After giving those Plaintiffs an opportunity to
17 show cause for their failure to respond, this Court granted our
18 motions without prejudice. That concluded the deficiency
19 process for the first round of notices that were sent out.

20 LMI sent out an additional round of notices in
21 October, which included about 60 deficiency notices and 60
22 delinquency notices, and again those Plaintiffs had an
23 opportunity to correct their Census Plus forms. After that
24 opportunity to cure their forms expired, we met and conferred
25 with Plaintiffs' counsel about the outstanding delinquencies

1 and we ultimately only filed one Motion to Dismiss.

2 As for the deficiencies, we just yesterday received an
3 updated report from LMI and there are about 18 Plaintiffs who
4 still have important deficiencies in their Census Plus forms,
5 so we plan to meet and confer with Plaintiffs' counsel soon
6 about those.

7 That is how the process has gone so far for the filed
8 Plaintiffs and it will proceed in this same way as LMI sends
9 out additional rounds of notices.

10 As for the unfiled claimants, the Court recently
11 entered PTO 56 which outlines the deficiency process for their
12 Census Plus forms. In accordance with that PTO, LMI sent out
13 deficiency notices at the end of November to, as Mr. Pulaski
14 said, about 40,000 unfiled claimants, and they now have 60 days
15 to correct their Census Plus forms.

16 Any unfiled claimants with deficiencies outstanding at
17 the end of that 60-day period will receive notice from LMI that
18 their claims will be removed from the registry in five days,
19 and we will be working closely with LMI and with Plaintiffs'
20 counsel over the next months leading up to and following that
21 deadline to monitor this process.

22 So, that concludes my census update for today. I
23 thank the Court for its time and I will now turn it back to Mr.
24 Petrosinelli.

25 *THE COURT:* Thank you, Ms. Daily, very much. It was

1 very thorough and it is, as I have indicated, a very important
2 part of the litigation. Sort of a dual track with the filed
3 claims is that which is happening with the registry and the
4 unfiled claims and how the parties on both sides, Plaintiffs
5 and Defense, are able to benefit from the information that is
6 being gleaned from the census so as to streamline the case.
7 Only those persons who have plausible claims moving forward,
8 only those Defendants who are alleged to have taken certain
9 actions are properly named.

10 So, I think that there are a number of benefits on
11 both sides. This issue of the census and the registry has been
12 discussed at a higher level in the Civil Rules Committee and
13 the MDL subcommittee of the Judicial Conference as a mechanism
14 that several MDLs are employing at this point to see what
15 benefits can accrue in the winnowing, narrowing process, if you
16 will, of MDLs.

17 This MDL is not unlike other MDLs where many claims
18 can be brought and parties are seeking for creative and
19 innovative ways and cost effective ways to ensure that only
20 those persons who have plausible claims against only those
21 parties who allegedly could be responsible are part of the
22 active litigation. The sooner parties are able to recognize
23 that, whether they are filed or unfiled, I think the better, at
24 least that is the thinking in the census registry.

25 So, to have such a detailed process in place in our

1 litigation and to have such careful reporting such as you have
2 done as to how that process works and such a thorough
3 understanding of it, one, benefits the Court and hopefully
4 benefits all who are listening to understand why we have the
5 census and registry program in place, how it works, and, of
6 course, it's a lot.

7 If there are parties who don't fully understand it, I
8 know that there are attorneys who are actively involved, those
9 on the screen today, who would always be available to explain
10 it. The goal is for everyone to understand it, when notices
11 are sent out, for people to comply.

12 And just from Ms. Daily's report we can see how that
13 has happened, whereas many, many notices of deficiency or
14 delinquency were sent out on the front end, but through the
15 collaborative work of the Plaintiffs and Defendants and LMI
16 that gets narrowed down to a far fewer number.

17 So, it seems to me, in that regard, the process is
18 working and I again want to thank you for the thorough update
19 that you have provided the Court.

20 *MS. DAILY:* Of course, your Honor, my pleasure.

21 *MR. PETROSINELLI:* Thank you, your Honor, Joe
22 Petrosinelli again.

23 Just to pick up on where you left off, I think that is
24 the take-away from Ms. Daily's report, is that the process is
25 working the way that it should. I think one of the core

1 functions of the census and registry is as a vetting tool, but
2 a reasonable vetting tool.

3 And I will say the LDC members on our side are the
4 ones who are handling that process. It requires, as the Court
5 might imagine, a degree of meticulousness and detail because
6 there are so many moving parts and they have handled it with
7 great skill. It has been a pleasure for me to be able to work
8 with them on that.

9 It has worked. As I say, the Court -- one of the
10 reasons why it has worked, I will mention is the Court -- one
11 criticism in other MDLs is that when forms are deficient, the
12 cases don't get dismissed, they kind of linger on the docket.
13 I think your Honor issued an order to show cause, as Ms. Daily
14 mentioned, and gave people an opportunity to respond, but then
15 promptly dismissed the complaints without prejudice, and that
16 is a really good feature of this census.

17 Let me, just to give you my comments on some of the
18 things that Mr. Pulaski mentioned -- all of which, by the way,
19 I agree with. He and I have had a great working relationship.

20 I think the aggregate data reports are a key feature
21 here, and for people on the phone, they should know about the
22 availability of these. LMI, as Ms. Boldt and Mr. Pulaski
23 mentioned, based on sort of the initial round of forms --
24 Census Plus forms that came in by the September 30th deadline,
25 has run what we call aggregated data reports, which are reports

1 that are not Plaintiff specific nor Defendant specific, but
2 actually look at the whole corpus of forms and turn out data
3 analytics that are really useful, I think, to the Court and to
4 the parties.

5 How many people claim to have taken, these are just
6 claims at this point, prescription versus over-the-counter
7 products, generic versus branded products; when did they
8 allegedly take them, starting and stopping; what is the age
9 distribution of the claimants; what is the state distribution
10 of the claimants. It is an incredible wealth of information.

11 We, the leadership on both sides, have those reports
12 and they are available to any lawyer in the MDL who represents
13 a party in the MDL. On the Defense side, the liaison counsel
14 have it, so people who are in different groups, brands,
15 generics, retailers and the like, can get those reports from
16 their liaison counsel. They give an incredibly detailed, even
17 at this stage, overview of the litigation.

18 Obviously, as Mr. Pulaski said, we will be amending
19 them as we go forward, for example, as deficiencies get
20 corrected, as more Census Plus forms are filed, as some census
21 registrants, as I assume will happen, will exit the registry
22 for deficiencies. So, it will be a living document -- or
23 living documents, I would say, but I think they are incredibly
24 useful for all sorts of reasons that the Court might imagine,
25 but they are available to counsel for any party through

1 leadership and liaison counsel.

2 I want to mention, as Mr. Pulaski said, that the
3 Defendants have held up their end of the bargain, I believe,
4 with respect to the information for the census. We have
5 provided, as Mr. Pulaski noted, for each manufacturing
6 Defendant, certainly brand and generic, which company
7 manufactured and sold which product in which dosages, in which
8 forms, and when. And that is enabling -- the Plaintiffs have
9 information, as Mr. Pulaski said, to tailor their short form
10 complaints or their Census Plus forms accordingly, but also for
11 the Defendants to know, you know, potentially, once LMI runs
12 data, which cases or claims they might reasonably expect they
13 could be named as Defendants in.

14 So that, again, is a process that is evolving as we
15 work through the deficiencies, but the information has been
16 provided and Mr. Pulaski's office has created an incredibly
17 helpful chart about that. I am going to guess Mr. Pulaski
18 himself didn't do it, just a guess, but I know who did it in
19 his office, and she is amazing. So, that is really useful, I
20 think, for all of us.

21 Finally, I will say this deficiency process with the
22 unfiled claimants is going to be a massive undertaking just
23 because of the number of claims, and I think Mr. Pulaski and I
24 have a pretty practical approach to this in figuring out what
25 is a true deficiency that needs to be corrected.

1 As you know, we have had some technical issues with
2 some of the vendors and, as Mr. Pulaski said, we are working
3 through those. I think we are hopefully a light at the end of
4 the tunnel there, and we are hopeful to get through that as
5 soon as possible once we hit the January 31st deadline.

6 As you might imagine, Special Master Dodge is an
7 incredible resource for us with respect to that, and we will be
8 spending a lot of time on that in the new year. And as I said
9 to the Court, and I don't think the Court would view this as a
10 bad thing, we do expect there will be a number of claimants who
11 would exit the registry just because they can't or won't fix
12 the deficiencies, and that is fine.

13 It is, frankly, one of the benefits of the registry,
14 it is easier to just have someone leave the registry than to
15 dismiss a filed complaint, I think. So, we would expect that
16 to happen, and we will continue working hard to use the
17 registry appropriately as a vetting tool, but also as a tool to
18 organize the case going forward.

19 Before I ended, I wanted to recognize Terry Henry, who
20 is counsel for the generics who has been dealing with some of
21 the census issues on their behalf. I think he would like to
22 just update the Court briefly on some of the things that the
23 generics are dealing with with respect to the registry, with
24 the Court's permission.

25 *THE COURT:* Sure, absolutely. Good morning.

1 MR. HENRY: Good morning, your Honor, Terry Henry, I
2 represent Apotex, one of the more popular generics. I am going
3 to be addressing only the PTO 52 dismissal issue that we have
4 been working with Plaintiffs' colead on. I want to put a
5 little bit more detail on the report that Adam gave you
6 earlier.

7 To give you an idea of exactly what we are dealing
8 with, as Adam said, in November we provided Plaintiffs a list
9 that consisted of 23 Defendants looking for dismissal in 77
10 cases, and then in December the list included 16 Defendants
11 looking for dismissal in 74 cases. And I think, by looking
12 back at the performance of the November list, it will give the
13 Court an idea of some of the bumps that we have run into that
14 Adam mentioned.

15 For example, on November 22, which is when the
16 Plaintiffs were to have dismissed cases, of the 77 on that
17 list, there were 28 that we had identified as deficient. In
18 other words, an amended short form complaint had not been filed
19 dismissing the requested Defendants, and there was no
20 explanation for why, which would have taken us to the next
21 step, which is the meet and confer process.

22 By working with Adam and the Plaintiffs' colead, we
23 were able to quickly figure out that many of those were simply
24 due to inattention. The Plaintiffs had not picked up on the
25 fact that they needed to do these dismissals, and we got rid of

1 a large portion of those.

2 As we sit here today, there are still 15 on that
3 November deficiency list that we are looking to try and
4 resolve.

5 The three specific issues that we have identified are,
6 number one, Plaintiffs simply are not filing dismissing as
7 required by PTO 52. Number two, Plaintiffs' counsel of record
8 did not provide a specific reason for the dismissal which would
9 lead us to the meet and confer process. And the third problem
10 we have run into are Plaintiff's counsel that are simply
11 unresponsive to the dismissal process.

12 By way of example, of the 15 on the current deficiency
13 list that we have, seven of those cases are with the Kelly
14 Ferraro firm that, despite multiple communications from Adam's
15 office, as well as from the Defendants, have been completely
16 unresponsive.

17 So, number one, it hampers Plaintiffs' coleads'
18 ability to help us resolve these issues, and we can't get to
19 the meet and confer process on those cases.

20 Now, the December dismissals are due on Monday,
21 December 21st, and then two weeks from that date, on January
22 4th, the Defendants will be providing the January dismissal
23 list.

24 So, we are working very hard to get through these
25 issues, and we hope that we can get it smoothed out because

1 this is, obviously, going to be an ongoing process. With that
2 detail and barring any questions from the Court, I will hand it
3 back over to Joe.

4 *THE COURT:* Okay, thank you so much. Is it Mr. Henry
5 or Hendry?

6 There is a waiting room icon blocking your -- Henry or
7 Hendry?

8 *MR. HENRY:* It is Henry, your Honor.

9 *THE COURT:* All right. Got it, I am only seeing part
10 of it.

11 I appreciate that update. It is important for the
12 Court to know. I don't know whether Mr. Pulaski or Mr.
13 Petrosinelli wanted to respond to Mr. Henry's comments. I know
14 how much work is being done and how arduous it is, and how much
15 emphasis is being placed on notice and opportunity to be heard,
16 and not casually seeking dismissals, but yet promptly following
17 through when dismissals are warranted.

18 So, is there any response as to the comments from Mr.
19 Henry?

20 *MR. PULASKI:* Yes, your Honor, if I may. Adam
21 Pulaski, colead for the Plaintiffs.

22 I, as recently as last night at 7:00 or 8:00 o'clock,
23 spoke to Mr. Henry. We speak often or communicate via email.
24 Our goal is to have a zero dismissal list.

25 The November list was 77 individual complaints that

1 they were seeking some movement on. We are down to 16 or 18, I
2 forget the number, half of those from one firm, and the other
3 half, I believe, are in the process of being fixed to the
4 satisfaction of the Defense.

5 So, I'm hopeful that by Monday or Tuesday of next week
6 we have all of the issues resolved for that first list, and
7 then we will be dealing with the next list of 70 plus. So,
8 again, I don't want to see any cases dismissed for this reason.
9 My hope is that, based on the information that we are providing
10 the Plaintiffs and that the Defense are providing the
11 Plaintiffs, that we can get it resolved quickly and not have
12 any issues, and that is it.

13 One other off Terry Henry subject, since Joe outed me,
14 and now everyone knows that Marla Fisher is the Wizard of Oz
15 behind my screen taking care of everything, I want to say, to
16 alleviate her pain and receiving emails from every Plaintiffs'
17 firm in the country asking for a copy of the aggregated data
18 report that Mr. Petrosinelli said is available, just to let
19 them all know that we will be sending out a copy of a report to
20 everybody come next week. It will be coming from Frank
21 Maderal.

22 *THE COURT:* Okay. All righty.

23 Mr. Petrosinelli, did you want to make any comments in
24 response to Mr. Henry?

25 *MR. PETROSINELLI:* No, not at all, your Honor.

1 THE COURT: All right. Again, thank you. I think it
2 is important to have the process work, and so, as to firms that
3 are not being responsive to notices from LMI, and outreach from
4 Mr. Pulaski or other Plaintiff's leads, it is important that
5 you be responsive, because you can see that there are potential
6 consequences, including being dismissed and/or removed from the
7 registry, if you are not complying with the procedures.

8 I think that the Court, with counsels' assistance, has
9 bent over backwards to build in safeguards and procedural
10 avenues to ensure that ample notice is given, ample opportunity
11 to be responsive, to cure, but at the end of the day, there
12 needs to be integrity and confidence in the process and in the
13 system, and when a Plaintiff hasn't complied, for example, with
14 all of the opportunities the Plaintiff has had to cure a
15 deficiency, at the end of the day that may mean a dismissal or
16 removal.

17 That is a necessary part of the process to achieve
18 ultimate goals of winnowing down only those claims that should
19 be remaining as a filed case or an unfiled claim in the
20 registry. It is the only way it works, so everybody has to
21 have confidence in it.

22 So, with that, let me ask, with respect to retailer
23 records for filed Plaintiffs produced, I understand that there
24 may be a PTO proposed from the parties coming soon, and just
25 wanted to get an update on where that is. I know timing is

1 often very, very important.

2 Is that something that counsel is expecting to get to
3 the Court first of next week?

4 *MR. PULASKI:* My understanding is that Ms. Johnston
5 has been working feverishly on getting that in order to send
6 over to me for review, and that will be coming post haste.

7 *THE COURT:* With timing issues, I want to make sure I
8 get it early enough that I can turn it around and get it out so
9 that it is consistent with deadlines that are in place. I will
10 look for that first of next week if we can manage that.

11 *MR. PULASKI:* Yes, your Honor.

12 *THE COURT:* Okay. So, before we move on from the
13 census and registry, are there any other issues? If not, I
14 will move to the next topic on the agenda.

15 Okay, with nobody --

16 *MR. PETROSINELLI:* Your Honor, this is Joe
17 Petrosinelli. Not from us. I think we will have a pretty
18 substantial report in January because we will know by then how
19 our deficiency process is going. Thank you for, as always,
20 spending time on this at the conference. I think it is an
21 important subject for everyone to know about, so thank you.

22 *THE COURT:* You are welcome.

23 Thank you to all of the presenters, and we will look
24 forward to continuing to get updates at each of the status
25 conferences.

1 With that, let me pivot to another important topic,
2 they are all important, they all have different places in the
3 litigation, and this is the discovery, topic of discovery.

4 I know that the Plaintiffs want to give me a brief
5 status update on where we are in discovery, so I want to hear
6 from you as to that.

7 Perhaps, rather than having everyone at once, we could
8 do it by Defendant categories, if that makes sense. If we want
9 to have maybe Plaintiff and Defense for the brands come on and
10 let me get an update on discovery as it relates to the brands,
11 and then maybe we can move to the generics, and then retailers.
12 I will see if distributors want to be heard as well.

13 The Court did recently enter the order relating to the
14 core discovery agreement that the Plaintiffs entered into with
15 the distributors.

16 Of course, Judge Reinhart is with me, and has handled
17 a couple of the discovery disputes already, although there have
18 been very few, only a couple, and I credit the parties for
19 working together trying to work issues out.

20 The Court is always available if disputes can't be
21 resolved, you know that, I have said that before, and I will
22 always say that. I will also always say that it is nice to
23 know that the parties are trying to work matters out, and if
24 you can reach it by consensus, I think often times you can
25 craft results that the Court may not be able to do and it may

1 be a less costly endeavor to try to work it out, rather than
2 teeing things up for disputes to be heard in a more formal
3 setting by the Court.

4 So, with that, let me let all counsel state their
5 appearance for the record and be heard.

6 *MR. McGLAMRY:* Good morning, your Honor, Mike McGlamry
7 on behalf of Plaintiffs.

8 Your Honor, I know you wanted to deal with these in
9 groups. I wondered if I would be allowed to make a general
10 comment first that might go across the board and then we can
11 break it down. I know, for example, Ms. Finken will be dealing
12 with part of the brands as well as Ms. Luhana.

13 So, I wanted to maybe make a comment to start this and
14 so that you will be able to see who you need to see in terms of
15 who is speaking on each particular issue, if that is okay.

16 *THE COURT:* Sure.

17 *MR. McGLAMRY:* Thank you.

18 I know Mr. Sachse -- I see him on the screen, I know
19 he has all the answers, as he always does, so I am glad he is
20 there with us.

21 Your Honor, very briefly, in terms of sort of this
22 overall topic of the general discussion of discovery, I wanted
23 to make a point sort of in the context of PTO 30, which is the
24 overall schedule, PTO 47, which is a discovery schedule, PTO
25 49, which is the class discovery schedule, as well as PTO 44,

1 which is the deposition protocol, all of those things factor
2 in. You are going to hear from others about production and so
3 forth.

4 I first wanted to say thank you for having this
5 conference today, thank you for making the decision to have
6 regularly scheduled conferences or meetings, or whatever we end
7 up calling those. We understand that would be twice a month,
8 and I know your Honor had asked if we would like to start the
9 first one around the January 8, 2021 cancer designation date
10 one way or the other, and at least from the Plaintiffs' side of
11 that, we would ask the Court if we could do that beforehand for
12 a couple reasons.

13 One, so that we can get that schedule set up so it is
14 every couple weeks; and then secondly, so as we do lead into
15 that January 8th date, if there are any issues, that we will be
16 in discussion with the special master pursuant to PTO 30 about
17 that, that those could be addressed if anything is there.

18 And so, I would ask if you would allow us to get with
19 Special Master Dodge and set up for the calendar over the next
20 couple of months so people know -- we could have that set so
21 people in advance could have those dates on their calendar.

22 *THE COURT:* I think that is a good idea, Mr.
23 McGlamry. I would ask that you work with the Defense and
24 Special Master Dodge to propose a schedule.

25 And just to be clear, I think what Mr. McGlamry was

1 referring to in saying every two weeks is a schedule along the
2 lines of there being a status conference every month, along the
3 lines of what we are having here today which cover a whole
4 range of issues, that could include a subcategory of discovery
5 as we are talking about now, but in addition to the status
6 conference that is general in nature covering a number of
7 topics, that there would be also once a month a discovery
8 status conference.

9 And so where the every two weeks comes in is, if we
10 schedule the discovery status conference at a different time
11 than the overall case management conference, we could arguably
12 be having a conference every two weeks, even though the
13 discovery conference would be once a month, and the case status
14 management conference, if you will, would be once a month.

15 And it may be that if we are able to cover the
16 discovery issues in the discovery conferences they don't
17 necessarily make their way on to the case management
18 conference, but no such detail has been ironed out, and there
19 is nothing to preclude it if it needs to be on the case
20 management conference.

21 Yes, I am looking to the parties to tell the Court
22 when the first conference would be desirable given we are
23 coming up with the holidays. I will look to get that, and
24 again, see that as a positive step to look ahead over the next
25 several months so we can all mark dates on the calendar.

1 My intention is clearly to have Magistrate Judge
2 Reinhart with me, as he is today, at the case management
3 conferences and, of course, at the discovery conferences. It
4 is contemplated that the discovery conferences are not
5 conferences where disputes are heard because there is a process
6 for how those disputes are heard, and that is encompassed in
7 the relevant PTO, but rather, it is an opportunity to update
8 the Court on how discovery is going and what the status of
9 discovery is to keep the Court fully aware and engaged as we
10 are turning into this new phase of the litigation and to give
11 the parties an opportunity to be heard.

12 Like every conference, I like the parties to meet and
13 confer and apprise one another of what is going to be presented
14 to the Court because I never like for any party to be unaware
15 or unfairly surprised by anything. It is a collaborative
16 effort and the Court is very much looking forward to that.

17 You may proceed, Mr. McGlamry.

18 *MR. McGLAMRY:* Thank you, your Honor. I appreciate
19 that and I appreciate, Judge Reinhart, you being available for
20 those conferences and meetings as well. It is a huge thing and
21 we really do appreciate it.

22 What I wanted to set in context, and then I will turn
23 this over to other people to deal with -- Mr. Sachse in terms
24 of the particulars in production and so forth, is looking at
25 the timing of all of this.

1 Your Honor has heard from us before about our concerns
2 about the timing. Under PTO 30, August 2nd, 2021 is the
3 discovery deadline for general causation discovery, and
4 December 20, 2021 is the close of all discovery, including
5 class discovery.

6 And if you look at -- I am not going to talk about
7 documents, although Your Honor knows that part of getting to
8 the depositions is getting to the documents. Just in context
9 of the depositions to again let the Court see where we are from
10 the timing standpoint, we have asked for depositions. You will
11 hear more on that from somebody else.

12 The first one set is January 20th, and between
13 January 20th and August 2nd, that is 183 total days, it is
14 actually --

15 *THE COURT:* Mr. McGlamry, there is something wrong
16 with your connection, unfortunately, so you are freezing from
17 time to time. I don't know if there is anything you are able
18 to do on your end. We will keep it going as is, but I may have
19 to ask you, like we did earlier this week with Mr. Cheffo, he
20 turned his video off and we could hear him perfectly.

21 I don't want to have to do that, but I also don't want
22 to have Ms. Stipes lose what you are saying. There is a pause
23 from time to time. If there is something you can do on your
24 end, I am notifying you. If it happens again, I will probably
25 ask you to turn the video off and we'll hear from your audio.

1 MR. McGLAMRY: That is fine, your Honor, it will
2 probably be easier on your eyes if --

3 THE COURT: It is pausing, so I would say turn your
4 video off, if you don't mind, right now.

5 Turn your video off, Mr. McGlamry, because you are
6 completely frozen at this point.

7 Now you can talk and we will see if we can hear you
8 better.

9 MR. McGLAMRY: Thank you, your Honor. Can you hear me
10 now?

11 THE COURT: We can.

12 MR. McGLAMRY: As I said, there are 183 total days
13 between that date PTO 54 contemplates as soft caps for
14 depositions of the brands, 82 depositions, and for generics,
15 five depositions per generic, let's just say, ballpark, there
16 are 20 generics, that is a hundred. The retailer and
17 distributor sort of soft caps are by meet and confer to
18 discuss, but let's say that there are a minimal number of ten
19 retailers times five and three distributors times five.

20 In addition to that, your Honor, PTO 54 deals with
21 depositions of third parties, and at this point in time the
22 parties have issued 44 third party subpoenas.

23 Let's just assume -- and there will be more, I know
24 that, but let's assume that just 20 of those result in the need
25 for a third party deposition under PTO 54.

1 And then, if you add to that from PTO 47 -- excuse me,
2 from PTO 49, the class discovery, I understand that depositions are
3 to start April 1st and go through November 19th. If you split
4 those in half between before August 2nd, and after August 2nd,
5 then that is, you know, just south of 90 depositions.

6 And so, at some level of count we are close to 400
7 depositions that have to be accomplished in 183 total days, 127
8 weekdays, and as your Honor knows, we contacted the Defense a
9 week ago yesterday to sort of raise this issue and asked them,
10 because we have to be in our minds, from the Plaintiff's
11 perspective, diligent in which depositions we choose to take
12 because we do have caps, soft caps -- and believe me, on our
13 side there are people that think those are very, very limited
14 numbers, but we have to be judicious in how we decide, which
15 will take getting some documents to do that.

16 But what we have asked the Defendants is to give us
17 days for depositions, so that we can fill up the schedule so
18 that on our side, from the Plaintiffs' perspective, we can
19 cover, whether it is five a day or two a day, one a day,
20 whatever it might be, and to make sure we can get all of this
21 done because, as we said, it is going to be incredibly
22 difficult to do this at the rate that we have been going.

23 We ask your Honor if we could engage with the special
24 master to sit down with us to get that going so that when we do
25 get back before your Honors the 1st of January, hopefully at

1 the very least, what we can do is fill up our calendars,
2 whether we have the exact names or locations, etc. in place.

3 With that, your Honor, Mr. Sachse may have comments he
4 may want to make, or we could move to the next subject on our
5 list, which is the status of noncustodial and custodial
6 productions, and thank your Honor again.

7 Let me say one thing. I really appreciate the LDC
8 participation and the Court getting all of those folks
9 involved. I wanted to say from a colead perspective that not
10 only is it a pleasure having them, but they are truly, on our
11 side at least, probably the same on the other, they are like a
12 big law firm and they are very meaningful participants and
13 contributors to that law firm.

14 Despite the point that, at least from my viewpoint,
15 some of them look like they are ten years old, they are
16 incredibly talented and incredibly -- not Mr. Sachse, but they
17 are incredibly talented and we are lucky to have them and we
18 are lucky that you let us have them. Thank you.

19 *THE COURT:* You are very welcome, and you are right,
20 we are very lucky to have them.

21 Mr. Sachse.

22 *MR. SACHSE:* Good morning, your Honor and Judge
23 Reinhart, good to see you both. This is Will Sachse on behalf
24 of GSK and also presenting for all of the brands today on
25 discovery.

1 What I thought might make sense is, if we hear from
2 Ms. Luhana and Ms. Finken about the brand specific issues, and
3 then I can come back and talk about our perspective on how
4 things are going and also maybe respond to Mr. McGlamry's
5 questions or issues with the schedule.

6 *THE COURT:* Okay. Certainly.

7 *MR. McGLAMRY:* Your Honor, that sums it up.

8 *MS. LUHANA:* Good morning, your Honor and Magistrate
9 Reinhart. Roopal Luhana of Chaffin Luhana for the Plaintiffs.

10 *THE COURT:* Is that snow back there?

11 *MS. LUHANA:* Lots of snow. We got nine inches in New
12 York yesterday.

13 *THE COURT:* I will not make you jealous it's around 60
14 here and sunny.

15 *MS. LUHANA:* We often have Bobby Gilbert -- we have
16 Mr. Gilbert and Mr. Dearman constantly reminding us of that.

17 *THE COURT:* Yes, that's true. Okay.

18 *MS. LUHANA:* I am going to give a brief update on the
19 status of custodial and noncustodial productions to date by the
20 brand manufacturer Defendants and a general update on the
21 generic manufacturer Defendants' productions.

22 Judge, as you are aware, the impetus behind PTO 47 was
23 Plaintiffs' request to the Court to enter a formal discovery
24 schedule. As the Court identified in the opening paragraphs of
25 PTO 47, a robust rolling production schedule was implemented in

1 order to, one, meet the 18-month discovery timeline agreed to
2 by the parties per PTO 30; and two, to ensure Plaintiffs could
3 meet our January 8th deadline to disclose the list of cancer
4 types.

5 The Court specifically required each Defendant to make
6 substantial rolling productions as quickly as possible. So, on
7 October 3rd, this Court entered PTO 47 requiring all brand
8 manufacturers to initially produce the first tranche of
9 custodial files no later than November 24, 2020, with
10 substantial completion of the same no later than December 31,
11 2020.

12 The Court also ordered the brand manufacturers to
13 substantially complete the production of noncustodial files by
14 certain dates per PTO 47. So, for Pfizer it was October 30th;
15 for Sanofi it's December 20th; for BI it's December 31st; and
16 for GSK, it's March 15, 2021.

17 The first deadline for the initial production of the
18 first tranche of custodial files was to be made by
19 November 24th. November 24th came and went. But for Pfizer,
20 none of the brand Defendants produced custodial files.

21 Shortly thereafter, Plaintiffs notified Defendants
22 that they had not received any of the custodial files per the
23 Court's order. The result of notifying Defendants was
24 underwhelming.

25 On December 4th, Sanofi produced only 900 documents

1 for 13 of the 16 tranche one custodians. The range of
2 production was anywhere from three documents for one custodian
3 to most being -- to one custodian, the most being a little over
4 200 documents.

5 On December 2nd and 11th, GSK has produced less than a
6 thousand documents for four of the 38 tranche one custodians.
7 GSK recently notified us that 20 of the 38 tranche one
8 custodians don't have any responsive VSI, with six custodians
9 who don't have any responsive VSI or hard copy custodial files.
10 So that means 32 custodians should still have custodial files,
11 with 18 also having responsive VSI.

12 Therefore, we planned a meet and confer with GSK
13 to replace some of the tranche one custodians previously
14 identified.

15 On December 4th, and just this past Wednesday, BI
16 produced a total of about 6500 documents for 17 out of the 27
17 tranche one custodians. BI informed us that because it
18 produced a little over a hundred documents for Andrew Gee,
19 (phon) that was the 30(b)(6) regulatory deponent on
20 September 18th, that was before PTO 47 was even entered, BI
21 believed it had complied with PTO 47.

22 We informed them that that neither complied with the
23 spirit nor the intent of PTO 47. Moreover, Gee wasn't even a
24 tranche one custodian.

25 Pfizer is the only Defendant that has made a true

1 rolling production of custodial files. It has produced over
2 30,000 documents, and just last night produced about 100,000
3 additional pages of custodial files. So, that is the status of
4 the custodial files.

5 I will move on to the noncustodial files and those
6 productions. Sanofi has only produced 3,000 documents after
7 PTO 47 was entered, including some SOPs, adverse event
8 documents, recall documents, and sales agreements. GSK has
9 only produced 7,000 noncustodial documents, including
10 safety committee documents, some adverse event documents, and
11 recall documents.

12 BI has produced about 34,000 documents post PTO 47,
13 that include SOPs, manufacturer documents, PV documents, and in
14 fact, just last night they produced adverse event documents
15 that we had requested and believed would have produced in
16 November, but they just produced them last night prior to this
17 CMC.

18 Pfizer has produced a little over 5,000 documents post
19 PTO 47, including adverse event documents, SOPs and study
20 documents.

21 Judge, in light of these limited productions, our
22 concern is, based on our experience in similar litigations,
23 there should be millions and millions of documents of
24 responsive discovery produced. Tellingly, our document
25 production vendor, OpenText, has informed us that in a typical

1 case where documents were produced for one custodian and emails
2 produced for nearly two years there are about 30,000 emails,
3 with a total of 50,000 documents produced just for that one
4 custodian.

5 The brand manufacturers' productions for its custodial
6 files pale in contrast. We anticipate we are going to get a
7 significant document dump of millions of documents on the eve
8 of December 31st.

9 This is why your Honor entered PTO 47, so Plaintiffs
10 would receive a rolling robust production of documents so they
11 could review them as they come in. However, we believe,
12 unfortunately, this is not going to be the reality here, it
13 just hasn't happened, unfortunately.

14 Now I want to update you on the generic Defendants'
15 production.

16 As you mentioned earlier, we have entered into a core
17 discovery agreement with the generic Defendant manufacturers
18 that requires them to produce specific discovery by the end of
19 the year. We have no reason to believe that they won't be able
20 to comply with the deadline unless they voice otherwise today.

21 That is all for the status update, your Honor. If you
22 don't have any questions, I will turn it over to Ms. Finken.

23 *THE COURT:* Okay. Thank you so much.

24 *MS. FINKEN:* Okay. Good morning, your Honor, Judge
25 Rosenberg, and good morning, Judge Reinhart. It is good to see

1 you both again.

2 I just want to followup on the status that Ms. Luhana
3 gave in relation to the document production, and thank you both
4 again. I echo what Mr. McGlamry said about scheduling a
5 discovery status conference in the middle of monthly CMCs
6 because I do think that a lot of the problems will be
7 alleviated just by having those check-ins regularly with the
8 Court and keeping all the parties on track in terms of the
9 schedule moving forward.

10 I am sure this goes for both sides of the V, but there
11 is nothing like a scheduled case management conference to get
12 the parties to engage and solidify issues that have been
13 brewing and spur document production and things of that nature.
14 So, I want to thank you for agreeing to schedule those on a
15 regular basis.

16 Good morning, Mr. Sachse, for the second time. We
17 have had a meet and confer already this morning you all will be
18 happy to know, so there is no rest for the weary. It has been
19 a long day already.

20 Tracey Finken for the Plaintiffs. I apologize to
21 Ms. Stipes for not introducing myself previously.

22 I just wanted to give a quick update on the
23 depositions. I know Mike had touched on them briefly and we
24 had discussed them briefly in chambers yesterday, but just to
25 give the Court an update, we had requested 30(b)(6) depositions

1 in key functional areas in June of 2020 from the brand
2 manufacturer Defendants. So far, one of those depositions has
3 taken place of a Boehringer Ingelheim employee in early
4 October. Since then, we have been trying to work with the
5 brand Defendants to schedule these depositions. We finally
6 received dates in the last seven to eight days.

7 After six months of trying to get dates on the books,
8 we are now scheduled to take those 30(b)(6) depositions
9 beginning in late January and going through April.

10 So, I did raise this with your Honor yesterday, but on
11 the record today I would like to again just emphasize that we
12 are fully committed to the schedule set forth in PTO 30.

13 It is incumbent, though, on the Defendants to produce
14 documents and witnesses in a timely manner, and I would suggest
15 that if the Defendants cannot do that, if they cannot produce
16 witnesses and documents in a timely manner, it is their
17 responsibility to notify the Court and us that they cannot meet
18 their obligations under PTO 30 so that we can deal with it.

19 Going forward, we anticipate we will be getting the
20 custodial files by the end of the year, significant documents
21 produced, and we will be reviewing them. We will be requesting
22 depositions of witnesses from those custodial files, and if it
23 is going to take six to nine months to schedule a deposition,
24 then that is obviously going to be problematic under the
25 deadlines set forth in PTO 30.

1 We anticipate that that is not going to be the case,
2 we are hopeful that is not going to be the case, and that when
3 we request depositions of witnesses, once we review the
4 custodial files, that we will get dates in short order and that
5 we can complete those depositions within 45 to 60 days after
6 requesting them.

7 If scheduling continues to be a problem, we will need
8 to seek the Court's assistance. Obviously, we are not in a
9 position to do that just yet, but we wanted to put that
10 potential issue on the Court's radar in the event that it
11 becomes a problem in the future.

12 Just briefly, we have started the process, the meet
13 and confer process with the generic Defendants and with the
14 distributor Defendants in terms of scheduling some foundational
15 30(b)(6) depositions hopefully in the near term. We served
16 some initial notices of deposition, and we have engaged in
17 discussions with them to try to get those on the schedule.

18 As I understand it, one of the generic Defendants has
19 provided a date for us for a deposition coming up on the
20 foundational topics and we are working to try to get dates
21 scheduled with the remainder of them.

22 I know that your Honor is anticipating issuing orders
23 on the Motions to Dismiss in short order, and hopefully once
24 that issue is resolved, they will be more amenable to
25 scheduling dates with us on a much quicker basis so that we can

1 get some of these foundational depositions completed.

2 One last issue, I know your Honor had asked us about
3 the January 8th deadline, and Mr. McGlamry had briefly touched
4 on us working with the special master and the Defendants in
5 terms of that deadline.

6 I did have a meet and confer this morning with Mr.
7 Sachse about their global adverse event data export which he
8 had indicated that they would be producing in January.

9 We have requested some clarity from him on the timing
10 of that production. He is going to get back to me and we will
11 talk to our team and see what, if any, effect that particular
12 production might have on that January 8th deadline. If it
13 becomes a problem, we will certainly discuss it with the
14 special master and, if necessary, the Court.

15 I also just wanted to put that potential issue on the
16 Court's radar as well.

17 *THE COURT:* Okay, thank you, Ms. Finken.

18 *MS. FINKEN:* Thank you, your Honor.

19 *THE COURT:* Let me let Mr. Sachse respond before I
20 make any comments. You have been waiting and I want to give
21 you the opportunity to be heard.

22 *MR. SACHSE:* Thank you, your Honor. Again, for the
23 record, this is Will Sachse for GSK and on behalf of all of the
24 brands on these discovery topics.

25 Let me just start by saying I am a bit baffled and

1 disappointed that this status conference has turned into
2 something that I think we did not expect it was going to be,
3 which was a real deep dive into how many documents have been
4 produced or not produced, where we are in our productions.

5 But putting that aside, I think I have a more
6 optimistic view of what we have done to date and where we are.
7 The brands have been working incredibly hard, making good
8 progress to meeting the aggressive discovery schedule in this
9 case. I think we are working very well with the Plaintiffs.
10 We also greatly appreciate that Special Master Dodge has played
11 a key role in moving us forward and twisting arms appropriately
12 on both sides when needed.

13 I am not going to say all of the issues are going
14 swimmingly, there are some open issues. We are meeting and
15 conferring. We have had a series of meet and confers recently
16 that were extensive and we are working through our issues.

17 From the brands' perspective, we really feel that we
18 have made significant concessions in an effort to reach
19 compromise and move forward on these issues. And as your Honor
20 noted, I think it really is a testament to the working
21 relationship and to Special Master Dodge's assistance that in
22 six months we are only dealing with a handful, a couple of
23 disputes that were elevated to Judge Reinhart, so I look at it
24 in a much more optimistic light than the Plaintiffs.

25 Let me go into some of the specific issues that they

1 raised, and I want to start with the questions about
2 depositions, deposition timing. Mr. McGlamry said that the
3 Plaintiffs are going to be looking at taking about 400
4 depositions in this case. Of course, I think it probably goes
5 without saying, but I will say it anyway, they are the masters
6 of this complaint and they are the masters of this litigation.

7 At least for now, they have chosen to sue all of these
8 various different entities, and so to some degree, the number
9 of depositions that they are seeking -- and they have also
10 insisted on taking, frankly, more depositions than we think are
11 necessary or appropriate, and we compromised on that issue, but
12 I think that this is to some degree a problem of their making.

13 And I do agree with Mr. McGlamry that we have always
14 said it makes sense to get the documents first before we do the
15 depositions, and I am glad to hear that the Plaintiffs also
16 agree with that.

17 But the bottom line is that we are giving documents,
18 we are making those productions and we are moving toward the
19 deadlines, and I think you heard that there are daily
20 productions, which somehow was seen as a bad thing or sort of a
21 negative, a black mark, but I think that is actually a good
22 thing, the fact that on a literally daily basis we are
23 making -- all of us collectively are making document
24 productions here.

25 So, the bottom line is that we are getting those

1 documents out the door, we're doing the best we can, and the
2 Plaintiffs are going to be in a position to take the
3 depositions that we have already agreed to, which are the
4 30(b)(6) depositions, and any fact depositions that they want
5 to notice as well.

6 On this notion of -- going back to Mr. McGlamry's idea
7 that the Defendants should collectively block off days or block
8 off times for depositions, I guess in Erie it is an okay idea,
9 but, of course, in practice the star of any deposition is the
10 witness. So, until we know who the witnesses are, it is hard
11 for us to commit that we are going to be able to do a
12 particular deposition for a particular Defendant on a
13 particular day.

14 All of that said, of course, we are collectively happy
15 to continue to meet and confer with the Plaintiffs and to work
16 on scheduling. We have shown to date that we are willing to be
17 flexible on scheduling, and I think the Plaintiffs also, to
18 their credit, have been willing to work with us on scheduling.

19 Sort of the last point on the 30(b)(6) depositions
20 before I move on to the document productions, I think at this
21 point we have agreed -- I shouldn't say agreed, but we have
22 offered dates for all of the 30(b)(6) depositions. They are
23 going through April. I will note that that is well before the
24 close of discovery, so we think it gives the Plaintiffs ample
25 time for whatever followup discovery they might want to conduct

1 after those 30(b)(6) depositions.

2 And the Plaintiffs have, I think, agreed with that
3 framework and that timing, maybe grudgingly, but they have
4 agreed. So, at this point, I don't think that there really is
5 a live dispute about the timing of those depositions.

6 One thing I will note on this is that we do still need
7 to have a meet and confer about the scope of those depositions.
8 That is something that has not happened yet, and needs to
9 happen in the next few weeks because we do have some
10 depositions starting, as Mr. McGlamry said, in late January.

11 So, moving on to where we are in terms of production
12 and documents, and there were a lot of numbers that Ms. Luhana
13 threw out there, but I do think, again, that we are making
14 daily productions and we have been prioritizing the records
15 that we think are -- and I think the Plaintiffs would agree --
16 the records that are kind of most central to the issues that we
17 need to grapple with first. What I mean by that is science,
18 safety, and regulatory.

19 And so the parties really have been -- or the brands
20 really have been focusing on getting those records out the
21 door. At the same time, of course, as we are working on all of
22 the other -- responding to all of the other voluminous
23 requests.

24 But there have been challenges, and I think the
25 challenges are understandable and, sadly, expected. COVID --

1 we can't ignore the impact that COVID has had. This is a
2 particular challenge for my client, it has a lot of paper
3 documents going back decades, but I think it is a challenge for
4 all of us and it has slowed down all of the productions.

5 The reality is, and again I am going to just speak
6 about my client here, but for GSK, who has several documents --
7 many, many documents in the UK that would be potentially
8 responsive, as you might remember, your Honor, the UK shut down
9 for a month in November, and it basically ground to a halt our
10 ability to extract potentially responsive documents, upload
11 them and scan them, do all of the things we need to do.

12 Even more recently, sadly, we had one of our vendors
13 who has been involved in scanning these old paper documents,
14 had to shut down because they had, unfortunately, positive
15 COVID tests, so they had to stop scanning documents. So, that
16 has slowed us down in terms of the old paper documents, but I
17 think we are collectively working through that.

18 And we are trying to get all of the electronic
19 information out the door as quickly as it can be reviewed, and
20 just on that note, I think that we -- we believe, the brands
21 believe that there was some slowness in the beginning,
22 certainly not all laid at our feet. We had to wait months and
23 months and months to have meet and confers about scope, the
24 scope of the discovery, and those are just now happening in the
25 last couple of weeks.

1 When we first went down the road of search terms, we
2 offered or proposed search terms and it took a month and a half
3 to hear back from the Plaintiffs. Again, I think that we
4 should be looking forward. I don't think it is really
5 productive to finger point, but I do feel like I need to clear
6 up the record because of the presentation we heard today.

7 The bottom line here -- I am going to try to end on a
8 positive note. The bottom line is, we are working incredibly
9 hard. As Ms. Finken alluded to, we are talking to the
10 Plaintiffs, we are engaging with the Plaintiffs when they have
11 questions. We are trying to work through the issues and, you
12 know, I think that we are on track to either meet or get very
13 close to getting all these documents out the door by the end of
14 the year, and obviously for my client, GSK, we are talking
15 about March 15th for the noncustodial productions.

16 The bottom line is that we will continue to meet and
17 confer and talk to them.

18 *MS. FINKEN:* Your Honor, can I respond to that for a
19 moment very briefly?

20 *THE COURT:* Yes. I know Mr. Yoo has come on.

21 *MS. FINKEN:* I think you are on mute, your Honor.

22 *THE COURT:* I know Mr. Yoo has also come on, so maybe
23 we will let him respond since there has been a presentation as
24 to generics, and then I will circle back with Plaintiffs and
25 then maybe move on to retailers and distributors.

1 MS. FINKEN: Thank you, your Honor.

2 MR. YOO: Thank you, your Honor. Good morning, your
3 Honor, and good morning, Judge Reinhart.

4 I, too, am a little bit surprised that the Plaintiffs
5 have taken this discussion to this level of detail. I don't
6 think we were given any notice that they wanted to talk about
7 these specific issues, but I did want to give you the generics'
8 perspective on the two topics that Plaintiffs' counsel raised
9 concerning the generics.

10 First, as to the core discovery agreement, the
11 generics have been working very hard to provide the information
12 required under the pretrial order. I think we are on track
13 generally speaking, we have provided a lot of information to
14 the Plaintiff. We talked about the use of that information for
15 short form complaints and Census Plus forms.

16 As to any individual issues that may exist concerning
17 certain of the generics, I think those are the subject of
18 individual discussions that those generics are having with
19 Plaintiffs' counsel, so there may be some logistical challenges
20 tracking down certain pieces of information, but those are
21 generic specific issues.

22 I think it is a little bit inappropriate to cast a
23 blanket on the generics as a group today and say, unless the
24 generics speak up, we expect everyone will be fully compliant
25 by December 31.

1 I can't speak to all of the specific issues that
2 individual generics may have, but suffice it to say I think
3 most generics' counsel are in the process of working very hard
4 and hopefully cooperatively with Plaintiffs' counsel to address
5 their individual issues.

6 I did want the Court to know we as a group have been
7 working very hard to meet our obligations.

8 As to Plaintiff's comments about 30(b)(6) depositions,
9 I want to let the Court to know that this topic came up only
10 last week. We got a first email from Plaintiffs' counsel last
11 week asking to meet and confer about 30(b)(6) depositions. As
12 your Honor knows, that was in the middle of our and everyone
13 else's preparation for oral arguments, but we have since had a
14 meet and confer with Plaintiffs' counsel.

15 Mr. Barnes and Mr. Henry and I and some of our generic
16 colleagues met with Plaintiffs leadership. I know that
17 individual generics have also had an initial meet and confer
18 with Plaintiffs' counsel. So, we are engaged, but I want to
19 let the Court know that the initiation of this discussion just
20 started.

21 I think you heard Ms. Finken and Mr. McGlamry allude
22 to the fact that they have been working with the brands for
23 about six months on 30(b)(6) issues, and I think they
24 acknowledge that depositions go hand in hand with the need for
25 documents.

1 We just started this discussion with Plaintiffs about
2 what deposition topics they are interested in. We are going to
3 need time to talk through search prongs. We are going to need
4 a meaningful opportunity to locate relevant documents, identify
5 the right witnesses, and, frankly, give the witnesses time to
6 review that information so that they can serve as 30(b)(6)
7 witnesses.

8 We are, I think, generally talking about time periods
9 that run up to 20 years or so in terms of supply and
10 distribution chain and the kinds of things that the Plaintiffs
11 seem to be interested in.

12 It is going to take us time to figure out whether we
13 have found a witness, whether that is one witness, many
14 witnesses, and we are talking about issues that cut across
15 different products, different suppliers, and different
16 manufacturing contracts. So, it is not a snap of the fingers,
17 we want deposition dates, and then we give them deposition
18 dates in two weeks.

19 We need a meaningful opportunity to work through the
20 real issues and hopefully achieve some coordination so that we
21 can minimize individual issues that may come up and motions
22 that may be needed along the way.

23 Thank you, your Honor.

24 *THE COURT:* Thank you, Mr. Yoo.

25 Ms. Finken, did you want to respond briefly?

1 *MS. FINKEN:* Yes, your Honor, thank you. Tracy Finken
2 on behalf of the Plaintiffs.

3 I just wanted to end on an optimistic note as well, as
4 Mr. Sachse said, and we are continuing to meet and confer, your
5 Honor. I am confident that moving forward the pace of
6 deposition scheduling and document production will pick up.

7 Our intent of giving the Court the status report today
8 was just to notify the Court of the status up until this point
9 in time so that you have a realistic vision of what has
10 occurred thus far, and the historical background, in the event
11 that any issue arises in the future that needs to be addressed
12 by either yourself or by Magistrate Judge Reinhart. That was
13 solely our intent of giving the status report today.

14 I am confident that we will work through these issues.
15 I am hopeful that we will work through these issues.
16 Obviously, if we cannot, we will bring it to the Court's
17 attention through the PTO 32 process, but I suspect that the
18 regular status conferences in and of themselves will be a big
19 assistance to us in moving the case forward in a timely manner.

20 Thank you.

21 *THE COURT:* Okay, and I appreciate that very much and
22 recognize the balance between reality, which brings
23 frustrations on perhaps both parts for different reasons, there
24 are some overlapping reasons, but also the genuine desire to be
25 cooperative and collaborative and be optimistic about how

1 things are going.

2 So, I understand sometimes they could be at odds or in
3 tension with one another, but I appreciate the truthfulness of
4 the presentation.

5 Judge Reinhart had to step off, but he will come back
6 on. I am not going to get into any of the details, of course,
7 of all of the issues that have been presented because this is a
8 case management conference to update the Court.

9 I will state the obvious, just a couple of points,
10 which is that we are coming upon the holidays and I think
11 everybody needs a break. I would ask everyone to be respectful
12 of what is to come over the next two weeks and understanding
13 with one another of the hard work that has been put in by
14 everybody and that perhaps the next two weeks may not reap the
15 kind of rapid response from either side as may be desired, but
16 I think that everyone needs to be patient and understanding at
17 least over these next two weeks.

18 Things are going to be very busy again starting the
19 first of the year, and just be understanding, patient, and kind
20 with one another particularly over the next two weeks.

21 With that being said, there have been some very
22 important issues that have been raised, whether it is anything
23 from a depo schedule to whether PTO 47 is going to be complied
24 with. These are perfect topics for meeting and conferring, as
25 it sounds like you are doing, but if you can do more of it -- I

1 don't think you can ever talk enough.

2 You have referenced Special Master Dodge as one who
3 can be a facilitator. She is not a discovery master, if you
4 will, but if communications sometimes break down, I think that
5 is one of her roles, is to ensure that she can track down the
6 right person for the right question to get the right answer in
7 a timely fashion.

8 I think topics that can and perhaps should be
9 discussed in a manner that is consistent with the meet and
10 confer is what kind of a depo schedule looks reasonable, have
11 the Plaintiffs provided the Defendants with enough clarity as
12 to who -- whom the Plaintiffs want to depose and who the
13 persons are -- whom the persons are who have the highest
14 priority in terms of the scheduling of depositions. The scope of
15 30(b)(6) depositions are, obviously, always very important so the
16 Defendants know the proper persons to identify and to be able
17 to properly prepare those persons.

18 So, scope of 30(b)(6), identity of non 30(b)(6)
19 deponents, and maybe Plaintiffs don't know all 400 plus, if
20 that is truly the number you think, but maybe you know your
21 next tranche of ten or 20.

22 I would imagine giving the identity of those persons,
23 and maybe you have, maybe you haven't, but if you haven't,
24 giving them to Defendants, allowing them to then confer with
25 those persons to get their availability, those are the kinds of

1 things that I think can be happening.

2 Again, we are coming on the holidays, but it is true
3 that for PTO 37 -- 47, rather, there are December 31st
4 deadlines for many of the tranches of custodial other than
5 GSK -- no, GSK as well, the noncustodial is a later date.

6 But the order should be complied with, and if there
7 are challenges and difficulties, of course those should be
8 discussed so that there can be perhaps consensus on where those
9 challenges are so Plaintiffs aren't caught off guard if
10 Defendants are encountering challenges, but absent any matters
11 that are brought before the Court, the Court would expect, as
12 with any order, quite frankly, that PTO 47 would be complied
13 with.

14 The Court has no reason from anything it has heard to
15 imagine that it is not going to be complied with, but
16 communication I think will foster clearer understanding of what
17 Defendants are doing and -- what they are doing and how that
18 matches what Plaintiffs' expectations are.

19 That is all I am going to say at this point about some
20 of the high level topics that have been raised. I do want to
21 hear from the retailers and the distributors to the extent that
22 they also want to be heard on any discovery related matters.

23 If I could ask the appropriate attorneys who are
24 speaking on those issues to come onto the screen to address the
25 Court on the status of discovery as it relates to your clients.

1 *MS. FINKEN:* Thank you, your Honor. Adam Pulaski is
2 going to come back on the screen to handle the retailers. I
3 apologize, I was supposed to leave room for him after my update
4 and I forgot. I apologize for that. Thank you very much.

5 *THE COURT:* Thank you so much.

6 Again, counsel, just identify yourself before you
7 speak.

8 *MR. PULASKI:* Adam Pulaski on behalf of the coleads
9 for the Plaintiffs.

10 *MS. JOHNSTON:* Good morning, your Honor, nice to see
11 you again. Sarah Johnston for the retailer and pharmacy
12 Defendants.

13 *THE COURT:* Good morning. Nice to see you as well.

14 *MR. KAPLAN:* Good morning, your Honor, Andrew Kaplan.
15 I represent Cardinal Health, Inc. and Medicine Shop
16 International, Inc. and I am appearing here today as liaison
17 for distributor Defendants.

18 *THE COURT:* Good morning. Nice to see you as well.

19 If I could have an update on the retailer and
20 distributor discovery.

21 *MR. PULASKI:* Sure. Real quickly and I'll be very
22 brief and then let Sarah and Andrew jump in.

23 We have a January 15th deadline for retailer discovery
24 pursuant to the core discovery agreement, and I know that
25 Ms. Johnston is working on getting some of that information

1 produced to us in advance. She is working, obviously, with a
2 large number of retailers, and it is a lot, and I expect that
3 we will get on a rolling basis starting, you know, perhaps
4 right after Christmas, some information from some of the
5 retailers and it will go through to the January 15th deadline.

6 In addition to that, because the fulsome discovery
7 process with the Defendants -- retailer Defendants begins after
8 your Honor's ruling on the motions that we just heard this
9 week, I have met and conferred with Ms. Johnston already in
10 anticipation of starting the full discovery process so that we
11 can get that prepared and ready to go once we get your rulings
12 on the motions.

13 *THE COURT:* Okay. Thank you.

14 *MS. JOHNSTON:* Good morning again, your Honor, Sarah
15 Johnston for the retailer and pharmacy Defendants.

16 I agree with what Mr. Pulaski said with respect to the
17 deadlines and status of the meet and confer. I will just
18 clarify that the January 15th deadline that Mr. Pulaski
19 referenced is as to non-product ID documentation as outlined in
20 the core discovery agreement with the retailers.

21 We have already begun the process of product ID
22 collections, and if the Court would like, I can give a brief
23 update on where things stand with that.

24 *THE COURT:* Okay. Sure. Maybe just turn your volume
25 up or come a little bit closer, it is a little hard to hear.

1 MS. JOHNSTON: Sorry about that. Is that better?

2 THE COURT: Perfect.

3 MS. JOHNSTON: So, as your Honor will recall, in PTO
4 51 we laid out a process by which the retailers were working
5 with LMI to create a discovery portal for individual Plaintiffs
6 to submit information to request loyalty card records and
7 prescription records from the individual retailers that were
8 named in their Census Plus forms and short form complaints.

9 That portal we worked out with LMI, that was opened up
10 in early November and per PTO 51, the retailers and Plaintiffs
11 agreed, with Special Master Dodge's help, to prioritize the
12 filed Plaintiffs' cases first in order to test the process and
13 make sure that it was running smoothly and make sure that there
14 were no technological difficulties before we went into the
15 larger pool of unfiled claimants.

16 That was opened up in early November, and the first
17 round of prescription and loyalty card records from the
18 retailers were submitted to LMI yesterday, so December 17th,
19 and we understand that LMI is processing those records and will
20 be depositing them into the individual folders for each filed
21 claimant that has submitted a request in short term.

22 I'm not exactly sure how that process works on their
23 end, but we understand that those records will be made
24 available to the individual Plaintiff's attorney as soon as
25 they are done being processed by LMI.

1 In terms of the next PTO, which I know Mr. Pulaski
2 referenced and the Court inquired about just a few minutes ago,
3 we had hoped to have something submitted today, but in advance
4 of making our productions yesterday with LMI, we did have some
5 technical hiccups that we wanted to work out before we put
6 something further in front of the Court, but I think that those
7 have been ironed out.

8 I am sure that there are going to be a few more
9 hiccups along the way because of the volume we are
10 anticipating, but we do think that we can put a subsequent PTO
11 in front of the Court by early next week, as Mr. Pulaski
12 referenced. So, with his blessing, we will hopefully have that
13 to you by Monday or Tuesday.

14 We also anticipate, based on some feedback that we are
15 getting from LMI, that we may have the need for a subsequent
16 PTO that would address potential inadvertent disclosure of
17 personal -- or protected health information, or HIPAA protected
18 information, so that will follow the next PTO on
19 product identification collections. The goal there is to
20 address any issues that we think may arise given the volume of
21 records that will be rolling in and distributed to the
22 individual claimants.

23 In sum, I think the process is working smoothly,
24 subject to smoothing out the technical issues with LMI, which I
25 think that we are doing well, and we will continue to work with

1 LMI and the Plaintiffs and with Special Master Dodge to make
2 sure it runs smoothly.

3 Just in general, we recognize, "we" being the
4 retailers, that the data that we have is important to the
5 census registry and important to making sure that the goals of
6 PTO 15 are carried out, and so we are going to continue to make
7 the process work as efficiently as possible.

8 *THE COURT:* Thank you, Ms. Johnston, I appreciate that
9 very much.

10 Mr. Kaplan, did you want to be heard, or did the
11 Plaintiff need to respond to anything Ms. Johnston said before
12 I turn to Mr. Kaplan?

13 *MS. FINKEN:* No. Tracey Finken on behalf of
14 Plaintiffs. I was just going to give, from the Plaintiffs'
15 perspective, the update on the distributor discovery. It
16 doesn't matter, I don't think, if Mr. Kaplan or myself give it.
17 You have entered the order this week of our core discovery
18 agreement that we entered into after a long meet and confer
19 process that we engaged in, and we anticipate that we will have
20 that in place going forward.

21 And the only issue that we are working through now is
22 the meet and confer process on 30(b)(6) depositions, but that
23 process has just begun. It is certainly not ripe for any type
24 of dispute, and I am confident that we will work through that
25 with Mr. Kaplan.

1 That is the gist of the discovery update as it
2 pertains to the distributors right now and Mr. Kaplan can
3 certainly respond to that. Thank you.

4 *THE COURT:* Thank you.

5 *MR. KAPLAN:* Thank you, your Honor, Andrew Kaplan
6 again. Briefly, I agree with Ms. Finken's description, so
7 unless the Court has any questions, I will yield the floor.

8 *THE COURT:* We should have started with the
9 distributors. I am going to remember that for next time.

10 Let me just circle back, and I appreciate Mr. Pulaski
11 and Ms. Johnston telling me early next week.

12 Just so we can really ensure that I mean what I say in
13 terms of people getting a break, can we really try to get that
14 to me no later than Tuesday morning? I would like to turn that
15 around by Tuesday at the very latest so no one is worrying
16 about Christmas Eve day and any of that kind of stuff.

17 It sounds like you are able to do it, but I want to be
18 consistent with my earlier comments that I really meant people
19 should take a break and so, I think that is the one thing that
20 at least the Court is expecting to receive. I wanted to button
21 that up on that date.

22 *MR. PULASKI:* I don't foresee a problem.

23 *THE COURT:* Very good.

24 *MS. JOHNSTON:* Your Honor, Sarah Johnston again. No,
25 not a problem at all. We have the draft in the works, we just

1 need to get Mr. Pulaski's blessing and then, obviously, the
2 Court's as well.

3 *THE COURT:* Excellent. Thank you so much.

4 Shall we move on to our next topic? We have two more
5 topics -- no, we have three more topics.

6 I have on my agenda that counsel wanted to address
7 class action. I understand that maybe the Plaintiffs want to
8 be heard on the deadline for amended master complaints, but if
9 we have resolved that and that is not an issue, I am
10 not inviting one, relating to PTO 36, and then class discovery
11 of Plaintiffs, whether Defense wanted to discuss the discovery
12 on the class action side.

13 If that doesn't need to be addressed, that is okay,
14 too, but I don't want to overlook issues that I thought I
15 understood were at least on a version of an agenda that I had
16 seen.

17 If counsel from Plaintiff and Defense who want to come
18 on to either tell me you have something to discuss or tell me
19 you are going to take a pass and that it is all worked out.

20 Let's have all counsel on the screen say hi and
21 introduce those who have not already been introduced today.

22 *MR. GILBERT:* Good morning, your Honor, Robert Gilbert
23 on behalf of the Plaintiffs, one of the four colead counsel. I
24 am joined here by my colleague, Conlee Whitely, who is a member
25 of the Plaintiffs' steering committee.

1 MR. BAYMAN: Good morning, your Honor, Andrew Bayman,
2 one of the Defense coleads and counsel for Boehringer
3 Ingelheim. I am, for our remarks with respect to class
4 discovery, going to turn it over to Ms. Showalter from Williams
5 and Connolly who represents Pfizer, and Mr. Sachse, who you
6 heard from previously.

7 THE COURT: Okay. Good morning.

8 MS. SHOWALTER: Good morning, your Honor, Annie
9 Showalter for Defendant Pfizer. Thank you, Mr. Bayman, for the
10 introduction.

11 MR. GILBERT: Your Honor, this is Robert Gilbert
12 again. I think that we addressed the issue regarding the
13 deadline for filing any amended class complaints yesterday to
14 everyone's satisfaction, so we don't know need to take up the
15 Court's time today with that.

16 We appreciate the Court recognizing, as you have done
17 several times today, that everyone is entitled to take a break
18 over the holidays, and we appreciate our colleagues' position
19 on the other side as well. We wish everyone enjoyable and
20 restful holidays.

21 We are available. Ms. Whiteley will handle any
22 responses with regard to class discovery issues on our behalf.

23 THE COURT: Okay. Thank you. Did Defense want to be
24 heard first?

25 MR. BAYMAN: Your Honor, we are not going to go into a

1 detailed presentation like the Plaintiffs did. We have served
2 discovery on the individual consumer class action Plaintiffs,
3 as well as the third party Plaintiffs. Plaintiffs have
4 responded. We have alerted them to what we believe are
5 deficiencies in those responses and a meet and confer process
6 is underway. I am going to let Ms. Showalter and Mr. Sachse
7 talk about that more specifically.

8 *THE COURT:* Okay. Thank you.

9 *MS. SHOWALTER:* Thanks, Mr. Bayman. Your Honor, this
10 is Annie Showalter for Pfizer. I am just going to discuss --

11 *THE COURT:* Wait, Ms. Showalter. Unfortunately, we
12 are having trouble hearing, kind of a little bit of breaking
13 up.

14 Is that a real cat in the background?

15 *MS. SHOWALTER:* No, it is not. That is not a real
16 cat.

17 *THE COURT:* Let's give it another go so we don't have
18 to ask you to turn your video off, which sometimes has solved
19 the problem in the past. Let's try it again and see if that
20 works. Let's have you start from the beginning.

21 *MS. SHOWALTER:* Of course. I will turn my video off,
22 your Honor, if it is still breaking up.

23 *THE COURT:* Yes, unfortunately. It's a bummer when
24 that happens. Let's hear you now and see.

25 *MS. SHOWALTER:* Okay. Has that solved our problem?

1 *THE COURT:* Yes, unfortunately, it does.

2 *MS. SHOWALTER:* That is okay. So, again, my name is
3 Annie Showalter.

4 *THE COURT:* Oh dear, Ms. Showalter, I'm sorry, it is
5 breaking up. It is coming in and out. Are the others hearing
6 it in the same way?

7 I am seeing nods. I was thinking maybe it was on our
8 end.

9 *MS. SHOWALTER:* Well, I can hand it over to Mr. Sachse
10 and try to dial in.

11 *THE COURT:* Okay. If you want to try to do that. And
12 then, if our cohost can let us know when Ms. Showalter is back
13 on, and just coordinate with Mr. Sachse, because I would like
14 to hear from her.

15 Let's give that a go. Okay?

16 *MR. SACHSE:* Good morning, again, your Honor, this is
17 Will Sachse for GSK and presenting on behalf of the brands.
18 This is going to be very brief, and again, keeping with my
19 theme of the day, optimistic.

20 So, with the third party payors, we have served
21 discovery on them, I think it was back in July, July 20th. The
22 third party payors served responses and objections on
23 October 23rd. There have been a couple of meet and confers. I
24 was not there, but my spies in the room told me that they are
25 going very well and very collegial, and I know that there is

1 another meet and confer actually scheduled for next week, early
2 next week, and we will continue to work cooperatively with the
3 Plaintiffs and try to resolve all of the open issues.

4 That is really the report.

5 *THE COURT:* Okay. Thank you so much.

6 Let's see. I don't know if Ms. Showalter has called
7 back in.

8 *MS. SHOWALTER:* Can you hear me, your Honor? I have
9 dialed back in.

10 *THE COURT:* I can, yes.

11 *MS. SHOWALTER:* Is it clearer now?

12 *THE COURT:* Yes, I can hear you and it is clear. Yes,
13 you can proceed.

14 *MS. SHOWALTER:* Wonderful, thank you. This is Annie
15 Showalter for Pfizer, and I am just going to briefly discuss
16 the status of affirmative discovery as to the consumer class
17 Plaintiffs.

18 That process is well under way, the Defendants issued
19 both interrogatories and requests for production of documents
20 to the consumer class Plaintiffs on the 29th of July, and we
21 have since received interrogatory responses from 183 of those
22 Plaintiffs, as well as 802 total pages of documents in response
23 to the requests for production.

24 On December 8, 2020, the Defendants wrote to
25 Plaintiffs regarding those interrogatory responses and the

1 responses to the requests for production, and we have a meet
2 and confer set for Monday, December 21, 2020. We are looking
3 forward to what we are confident will be a productive
4 discussion during which we can resolve any perceived
5 deficiencies with the production.

6 *THE COURT:* Thank you so much. That came through loud
7 and clear, and thank you for that report.

8 *MS. SHOWALTER:* Thank you, your Honor.

9 *THE COURT:* Was there anyone else who wanted to speak
10 on the issue of the class discovery?

11 *MS. WHITELEY:* Your Honor, this is Conlee Whiteley.
12 If no one from the Defense side has anything else to say, I
13 would just add a few comments.

14 *THE COURT:* Yes.

15 *MS. WHITELEY:* The comments from Defense counsel are
16 accurate. We began in the summer producing informal
17 discovery for both the third party payors and the consumer and
18 medical monitoring Plaintiffs. There have been rolling
19 productions since then, those will continue, and some of our
20 productions we increased after we had come to terms with
21 Defense counsel during the meet and confer process and narrowed
22 the issues, but we have an arduous task in front of us.

23 We have two teams in place, one for the third party
24 payors and one for the consumer Plaintiffs, attorneys who are
25 working diligently on this, and specifically with each of the

1 183 consumer Plaintiffs to provide a robust production, and we
2 look forward to that continuing and to coming to agreements
3 with the Defense counsel during our upcoming meet and confers.

4 *THE COURT:* Wonderful. Thank you so much for that
5 update.

6 Okay. If no one else wants to be heard on the topic
7 of class discovery of Plaintiffs, then we will move on to our
8 next topic. Thank you all very much for the report.

9 The next topic is State/Federal coordination. It was
10 my understanding that the Defense wanted to discuss where we
11 are on State/Federal coordination. I know that I have seen
12 some statistics that were provided to the Court about how many
13 cases there are in other states, so I don't think you need to
14 take your time reciting that again to the Court.

15 But if you want to make any remarks substantively on
16 where we are and what you want me to know, and if there is
17 anything that you need or want from the Court in that regard.

18 *MR. AGNESHWAR:* Yes, thank you, your Honor. It's
19 Anand Agneshwar representing Sanofi, but speaking for the
20 Defendants, and also on the screen is Kathryn Podsiadlo, who is
21 an associate in our Los Angeles office, who is not officially
22 an LDC member, but is one in spirit. We had an LDC member from
23 my firm present last month, so I thought I would spread the
24 opportunities around here.

25 Kathryn is going to give a little bit of an update,

1 hopefully it is not going to be duplicative of what we put in
2 the agenda, but just kind of putting this in buckets and
3 talking about the status of the cases. Then there is a bit of
4 an ask, which I will follow up with after that.

5 *THE COURT:* Thank you very much, Mr. Agneshwar.

6 Hello, it is Ms. -- how do you pronounce Podsiadlo?

7 *MS. PODSIADLO:* Podsiadlo, yes, your Honor. Good
8 morning. Thank you for the opportunity to speak today. I am
9 happy to be an honorary member of the LDC, as Anand
10 characterized it. I work closely with him and many of the
11 other members of the joint defense group on State Court cases,
12 and I am here today to give the Court an overview of the State
13 Court litigation landscape.

14 There are two broad categories of State Court cases at
15 this time. The first category of cases are those where
16 complaints have been filed, but nothing substantive has really
17 happened yet.

18 Cases that fall into this category are pending in five
19 jurisdictions. There is a single Plaintiff case pending in New
20 York County, New York, a single Plaintiff case pending in the
21 Parish of New Orleans in Louisiana, two single Plaintiff cases
22 in Texas, where the brands were brought in as third party
23 Defendants, one multi-Plaintiff case in Puerto Rico with 21
24 Plaintiffs, and one case in Baltimore City, Maryland filed by
25 the Mayor and City of Baltimore.

1 The second category of cases are those where there has
2 been some sort of activity after the complaints were filed, and
3 I will briefly provide an overview there.

4 Those cases are pending in Illinois, California and
5 Tennessee. With respect to Illinois, there are five cases
6 pending in Cook County where the Plaintiffs have named retailer
7 as the sole Defendant. Motion practice on the pleadings are or
8 will be underway in those cases.

9 In addition to those cases, there is one other case
10 that was filed in Cook County that named the same retailer and
11 the brands as Defendants. The brands have removed that case
12 and it is currently pending in the Northern District of
13 Illinois before Judge Joan Lefkow. That case is stayed pending
14 Joan Lefkow's decision on a Motion to Remand that has been
15 fully briefed.

16 Parallel to this, the brands have tagged that case to
17 the MDL. Plaintiffs have proposed a transfer to the MDL.
18 Briefing on the Motion to Vacate the conditional transfer order
19 is underway, but the JPML has actually already added this to
20 its calendar for late January. So, depending on how the timing
21 shakes out, this case may make its way over to the MDL.

22 This brings me to two jurisdictions where the most
23 cases are filed outside of the MDL, and that is California and
24 Tennessee.

25 With respect to California, your Honor will likely

1 recall that the brands removed 42 cases filed by Baum Hedlund
2 Law Group in California State Court. Those cases named some
3 California based retailers and the brands as Defendants, and
4 those cases are currently pending the MDL.

5 In September the same law firm filed a second round of
6 cases in California State Court. Those cases are
7 multi-Plaintiff cases with over 1,000 Plaintiffs, and those
8 cases, unlike the prior ones, name only California based
9 retailer Defendants. However, the allegations in the complaint
10 largely mirror those that are currently pending in the MDL, and
11 the brands removed those cases to the Northern District of
12 California in October, and Judge Susan Illston remanded them.

13 So, those cases are currently back in California State
14 Court, and Plaintiffs' counsel has recently filed a petition
15 for coordination to create what is called a Judicial Council
16 Coordinated Proceeding, or JCCP. This petition is California's
17 mechanism to coordinate cases filed in different counties
18 within California before one judge. In other words, it is kind
19 of like California's version of a mini MDL.

20 A hearing on the petition has not yet been set, and
21 there is an agreement to stay the cases pending a decision on
22 petition.

23 Finally, your Honor, that brings us to Tennessee,
24 where there are 65 single Plaintiff cases naming only the
25 brands as Defendants. 50 of the cases are coordinated

1 in Hamilton County, where Chattanooga is located, before Judge
2 J. B. Bennett. The remaining 15 cases are coordinated in
3 Shelby County, where Memphis is located, before Judge Jerry
4 Stokes. The cases are split between two judges because, unlike
5 California, Tennessee doesn't have a mechanism to coordinate
6 those judges for one single coordination judge.

7 Defendants have filed Motions to Dismiss in all of
8 these cases, and the parties expect briefing on the Motions to
9 Dismiss to be completed in January, but a hearing on the
10 motions has not yet been scheduled.

11 Apart from the Motions to Dismiss, the parties have
12 met and conferred about discovery and other case management
13 issues to set up the infrastructure for the Tennessee
14 litigation. The parties will likely propose case management
15 orders that mirror several of the foundational case management
16 orders here in the MDL.

17 With that, I will turn it back to Mr. Agneshwar,
18 unless the Court has any questions.

19 *THE COURT:* No. Thank you so much, that is very
20 helpful to know.

21 *MR. AGNESHWAR:* Thank you, your Honor. May I proceed?
22 It's Anand Agneshwar.

23 *THE COURT:* Yes.

24 *MR. AGNESHWAR:* Your Honor, that kind of picks up to
25 where I want to lead off, is that there is no question that the

1 MDL is the primary vehicle for the Zantac cases. We heard
2 about the registry earlier, and there is a lot of mechanisms
3 that the Court has put in place to encourage anyone who has --
4 who believes they have claims related to Zantac to file here.
5 Far and away, the MDL is where we have the most cases when you
6 think about the registry and the census, as well as the filed
7 cases.

8 That said, we do have this handful of one off cases
9 and now we are starting to see some activity in a couple of
10 other jurisdictions, in particular Tennessee, where Tennessee
11 does not have a statewide coordinated proceeding, but they do
12 have countywide coordinated proceedings, so we have cases that
13 have been coordinated in Chattanooga and cases that have been
14 coordinated in Memphis.

15 We have had an initial status conference in both of
16 those cases, and both of the judges, Judge Bennett and Judge
17 Stokes, expressed an interest in what is happening in the MDL.

18 *THE COURT:* Can you give me the name? It's Judge
19 Bennett and Judge --

20 *MR. AGNESHWAR:* Stokes, S-T-O-K-E-S.

21 *THE COURT:* What I would ask -- and I will let you
22 complete, but I don't want to forget. If you'd give Special
23 Master Dodge the full names of the judges, and if you have any
24 contact information for them, even the case numbers, something
25 along those lines would be very helpful. I am going to wait

1 until you finish and also see what you are requesting of the
2 Court, but I would like that in any event.

3 MR. AGNESHWAR: You have previewed what I was going to
4 say, your Honor, because that is what I was going to suggest.
5 Both of these judges have expressed an interest in hearing
6 about what has been going on in the MDL, and in fact, Judge
7 Bennett's order, case management order in Chattanooga kind of
8 mirrors the first case management order that this Court
9 entered.

10 I think they would both -- I am just speculating about
11 this, but based on the case management conferences, I think
12 they would appreciate a reach out by this Court to provide your
13 guidance based on your year of experience, really two years of
14 experience when you think about how much we have done in the
15 last several months, guidance to the case management of the
16 Zantac cases. So, that is one of the things I was going to ask
17 for.

18 The only other thing I would say is, I don't think we
19 need a big infrastructure set up for State Court coordination,
20 but I think it would be useful at this point, now that we have
21 activity that is actually getting off the ground, case
22 management conferences, discovery issues, is to appoint on both
23 sides a State Court liaison so we can confer with each other
24 and then propose any processes we think would be appropriate as
25 we monitor the activity going on in the State Courts just to

1 provide efficiency and avoid duplication and inconsistency of
2 results. I think that type of thing happens in other MDLs and
3 I think we are kind of at the point where it would be useful
4 here.

5 That is really it, your Honor.

6 *THE COURT:* Okay, thank you so much. Did the
7 Plaintiffs want to say anything on this topic?

8 *MR. GILBERT:* Briefly, your Honor. Robert Gilbert on
9 behalf of the Plaintiffs. I see my colleague, Mr. Pulaski, is
10 also on the screen and may supplement what I have to say.

11 Number one, before I respond to my friend, Mr.
12 Agneshwar's comments, I wanted to let the Court to know, if you
13 have not already seen it, that among the new cases that has
14 been transferred into the MDL by the judicial panel is a case
15 brought on behalf of the State of New Mexico by the Attorney
16 General's Office in New Mexico. That case is obviously
17 different in many respects than many -- than the individual
18 personal injury cases or wrongful death cases that are being
19 transferred into this MDL.

20 We will be reaching out to counsel for the State of
21 New Mexico in connection with that case and I anticipate that
22 that should be an issue that will be part of the agenda perhaps
23 at the next informal or formal conference with the Court.

24 Secondly, I just would like to respond just briefly,
25 not so much on the substance, we were a little surprised,

1 frankly, to hear Mr. Agneshwar's comments a moment ago.
2 Consistent with your directive and the conversations we had
3 during our in-chambers conference yesterday, Mr. Agneshwar's
4 comments about this request by two state judges in Tennessee
5 and somewhere else, I believe, to have outreach to them has
6 never been communicated to us, certainly not to me and not to
7 Mr. Pulaski or our other two coleads.

8 It would have been best if we had conversations like
9 that in advance of the CMC today, and I would invite Mr.
10 Agneshwar to reach out to us in the future so that we could
11 coordinate these types of comments with the Court on a going
12 forward basis.

13 Thank you, your Honor.

14 *THE COURT:* Any concerns if the Court was entertaining
15 any possibility of reaching out to any State Court judge who
16 may or may not want to talk to the Federal judge overseeing the
17 MDL? Are there any concerns that I should be aware of?

18 *MR. GILBERT:* None that I can think off the top of my
19 head, and I didn't mean to imply that there would be, if that
20 is what you heard.

21 I simply think that this is a messaging issue and
22 sometimes the messaging is appropriate for both sides to share
23 with the Court because there may be perspectives that are
24 similar and there may be differing perspectives. Frankly,
25 hearing it for the first time two minutes ago, I can't

1 adequately respond if there is a different perspective.

2 In terms of hearing from your Honor directly, no, we
3 never have a concern at all about you, Judge Rosenberg,
4 reaching out to one of your state colleagues anywhere across
5 the country.

6 *THE COURT:* Okay. Thank you.

7 *MR. PULASKI:* If I may, Judge, briefly to respond to
8 Mr. Agneshwar's comments and what is going on in State Court,
9 there are several jurisdictions, obviously, where State Court
10 cases have been filed.

11 We have been in contact with the attorneys in all but
12 one of those cases and, you know, while the focal point of this
13 litigation is this MDL, and that is kind of referenced by the
14 63,000 plus Census Plus forms that have been filed and
15 claimants filed in the registry, there are also very important
16 State Court litigations that are properly filed in State Court
17 and whose cases need to be heard in State Court as well.

18 For sure, I believe there will be interaction and it
19 is proper for you to have interaction with the State Court
20 judges in order to coordinate and there needs to be a
21 coordination process once things get going in those
22 litigations. Some of them are moving along quicker than
23 others.

24 While I reach out to the Plaintiffs' Bar on those
25 cases, and Mr. Agneshwar and team reach out on the Defense

1 side, it is our opinion, again, that while the MDL is the focal
2 point, it is very important for those litigations to have their
3 autonomy and at the same time, to have coordination with this
4 judge.

5 *THE COURT:* Thank you, Mr. Pulaski. I think, Mr.
6 Pulaski, you are serving in an informal capacity as the
7 Federal/State coordinator for the Plaintiffs. You can correct
8 me if I'm wrong.

9 Mr. Agneshwar has raised the issue of maybe it's time
10 that there be a formal structure in place. I am taking that to
11 mean a Federal/state liaison appointed formally, if one hasn't
12 been appointed for the Plaintiffs, and then one for the
13 Defense.

14 Are you in agreement with that?

15 *MR. PULASKI:* I am okay with that, Judge, yes.

16 *THE COURT:* Can I ask Plaintiff and Defense to -- I
17 think with other liaisons, I have put them into PTOs. If you
18 want to draft a proposed PTO, coordinate perhaps with Special
19 Master Dodge, get it to the Court. It sounds like both sides
20 are in agreement, sounds to me like it is a good idea, and I
21 would be happy to enter such an order.

22 I wanted to give a few remarks on the issue of
23 State/Federal because I know how important it is.

24 I do want to assure everyone that the Court is very
25 willing to engage in State/Federal coordination at the right

1 time. As you know, from the beginning of this MDL we have
2 recognized that duplicative discovery can place an unnecessary
3 burden on the Courts and the parties and that coordinating
4 discovery can be done in ways that save both judicial resources
5 and expenses to the parties.

6 The registry process and the depo protocol both
7 include provisions that will allow the parties to do their part
8 in sharing discovery and coordinating with State Court to help
9 minimize these costs.

10 I know we have been able to continue forward here at a
11 fast pace despite COVID. We are now looking at this as being a
12 two-year MDL, not the ten months that it actually is, and so
13 our document productions and depositions may be happening
14 before they do in some of the State Courts, although your
15 report here today indicates that there certainly is activity in
16 certain of the states.

17 So, I do want to encourage the parties to engage with
18 their State Court counterparts to ensure that you are trying to
19 coordinate wherever possible. I do want you to know as well
20 that I am fully supportive of coordination and I have heard
21 from you today some suggestions as to what the Court can do in
22 terms of appointing liaison to help coordinate and perhaps even
23 reaching out to certain judges, I guess two in particular, or
24 one in particular in Tennessee who has expressed an interest.

25 You know, as a former State Court judge, I do have

1 tremendous respect for my peers in the State Courts and the
2 challenges that they will face in this litigation, just as the
3 challenges that we are facing here, but I do intend to work
4 closely with any of those judges who would like to do so.

5 They are independent and they can do and will do what
6 they want, but I want to be a resource if I can be helpful. We
7 are 50 some odd PTOs into this case, and as you have indicated,
8 at least our first PTO has been emulated to some extent in one
9 of the State Court cases. I take that as a compliment to all
10 of you.

11 I would like for you to continue to keep me apprised
12 at status conferences, and if things happen in the interim, to
13 let the special master know so she can let me know.

14 I know, for example, Mr. Gilbert, you mentioned
15 something regarding the New Mexico case and the Attorney
16 General, you wanted to make sure that that is on my radar. If
17 there are things you particularly want me to know before our
18 next status conference, please communicate with the special
19 master so I don't miss a beat on any of these important issues.

20 I would ask that the parties continue to meet and
21 confer about what is happening at the State Court level and
22 what, if anything, you have as suggestions, just as you have
23 suggested today two very particular things.

24 That is really all I wanted to kind of respond to you
25 on that part.

1 MR. GILBERT: Will do, your Honor.

2 THE COURT: Okay, great, great.

3 So, if nothing further, then we will move to our last,
4 but absolutely not least important, as I say each time, agenda
5 item, which is the topic of our NextGen/LDC.

6 I don't know whether we have a particular attorney.
7 Is it Ms. Larmond-Harvey who is going to be able to join us to
8 say hello, to reintroduce herself, although I remember you, and
9 to let us know what you are doing, how is it going.

10 And then I will save my remarks for after you make
11 your presentation.

12 MS. LARMOND-HARVEY: Thank you, your Honor. I
13 appreciate the opportunity to speak today.

14 Good afternoon, your Honors, Judge Rosenberg and
15 Magistrate Reinhart. My name is Nicola Larmond-Harvey and I am
16 located in the Tampa Bay area in Florida. You may recall from
17 my PSC application that prior to becoming an attorney I
18 practiced as a registered nurse for about ten years.

19 Your Honor, thank you for your commitment to the
20 development of younger, less seasoned attorneys. The
21 opportunity that the Leadership Development Committee provides
22 allows us to learn from a group of passionate, brilliant, and
23 professional attorneys. It is truly invaluable. Each of us
24 can say that we have already enhanced numerous skills.

25 Speaking for myself, I can say that I have read books

1 on MDLs and could probably read numerous more, but even then I
2 would not have appreciated what a Plaintiffs' steering
3 committee truly does.

4 Being in the trenches and participating in the PSC's
5 inner workings has been a tremendous opportunity for me. LDC
6 has allowed us to improve our craft while contributing in a
7 meaningful way to the litigation. My role on the committee has
8 allowed me to utilize my skills and training as a nurse to work
9 with the science team and several additional teams.

10 Our LDC members are involved in every subcommittee.
11 We are treated equally, work is fairly apportioned and
12 all opinions are respected. Earlier this week we all saw the
13 exceptional oral arguments presented by fellow LDC members Je
14 Yon Jung and Brad Lear. Earlier this morning we heard the
15 detailed report on the census registry from Paige Boldt. Their
16 presentations demonstrates how fully immersed members are in
17 every aspect of this litigation.

18 It has been seven months since the PSC was appointed,
19 but the growth we have individually experienced feels like
20 several years worth. The PSC family has consistently shown a
21 commitment to facilitate the growth and success of every LDC
22 member.

23 I feel fully supported to carve out areas within which
24 I can utilize my skills and I am encouraged to explore new
25 areas to expand. As the litigation continues, I look forward

1 to continued growth.

2 Your Honors, in closing, I want to reaffirm to you our
3 appreciation for your vision in creating the Leadership
4 Development Committee, it has been impactful.

5 Thank you. I appreciate the opportunity to speak
6 today. Thank you.

7 *THE COURT:* Thank you so much, Ms. Larmond-Harvey. I
8 can't tell you how pleased I am to see you again. I very much
9 remember your interview and the unique perspective that I was
10 persuaded that you would bring to this litigation with your
11 nursing background and really the whole package that you
12 presented.

13 And you, like all of the other LDC members, it is so
14 abundantly clear to the Court -- both Judge Reinhart and I
15 equally place importance and recognize the value of including
16 younger, less-experienced attorneys in important roles.

17 He has his own set of protocols in this MDL, and
18 really in all of his cases, that encourages newer lawyers to be
19 able to make oral presentations and participate actively in
20 litigation.

21 I think collectively we on the Bench and the Bar have
22 a responsibility to ensure that the next generation of lawyers
23 is fully immersed in litigation. We have seen a waning of
24 trials, and even a waning at times of opportunities to come
25 into court, and certainly during COVID really nobody is coming

1 into court.

2 One of those silver linings, I believe, with COVID and
3 transferring our in-court proceedings into online proceedings,
4 is that, first of all, more people can observe even if they are
5 not presenting like you have today, and hopefully they are
6 learning from that process.

7 The fact that this leadership team in this MDL has
8 taken it upon itself to so fully include and immerse and mentor
9 and encourage the LDC members and other members of the PSC to
10 participate in the litigation, to actually argue the first
11 round of substantive motions on Monday and Tuesday, as you
12 pointed out, to speak at the case management conferences both
13 in terms of presentations, such as yourself, and also some of
14 the others who spoke here today substantively on some of the
15 updates on the agenda.

16 It brings great joy to the Court. I have a big smile
17 on my face thinking about it and talking about it. I think it
18 is a win/win. They are doing a tremendous favor to you, but
19 quite honestly, you all are doing a tremendous favor to them
20 and to the Court. For all of the reasons that the Court
21 expanded upon in the order that set up the structure, it is so
22 vitally important that we hear from different perspectives in
23 this litigation, and that is exactly what we are able to do by
24 putting together the kind of leadership structure that includes
25 the LDC in this case.

1 You all have done a terrific job, both the top coleads
2 in allowing for the structure to actually work so it is not a
3 structure in name and in print only in an order, but that it is
4 really working. You are to be credited for that and to all of
5 the LDC members and those who are friends of the LDC members,
6 sort of the NextGen, those who are more experienced, perhaps,
7 and more senior, but maybe have not had a MDL before, so we
8 have put you in a NextGen or LDC category, which I hope
9 everyone feels is an honor. I would like to be part of the LDC
10 if I could become an honorary member, quite frankly.

11 I just thank you for fully participating and being so
12 engaged and so willing to learn and so willing to contribute.
13 Thank you to all of the leadership for allowing this to happen,
14 and for my colleague, Judge Reinhart, to be so supportive of
15 this role for our LDC members.

16 *MS. LARMOND-HARVEY:* Thank you, your Honor.

17 *THE COURT:* You're very welcome.

18 I don't think I have anything else on the agenda, do
19 I?

20 *MR. GILBERT:* Judge, Robert Gilbert. I don't believe
21 there is anything else formally on the agenda. I'd like, just
22 as a housekeeping matter, to remind the Court, as I am sure you
23 are aware, but in case they slipped through, there are three
24 pending unopposed motions to drop certain Defendants that have
25 been filed over the past week, Winn-Dixie stores, Anda

1 Repository, and M Cure Pharmaceuticals. There may be a fourth
2 coming in this afternoon, but I wanted to put that on the
3 Courts' radar.

4 And I wanted to echo on behalf of my coleads on the
5 Plaintiffs' side, as well as our entire PSC, your comments just
6 a moment ago that while it is a tremendous opportunity for each
7 of our members of the Leadership Development Committee to
8 enhance and hone their skills by being with us, we are the ones
9 in large measure who are benefiting and feeling grateful and
10 overjoyed by the experience we are having mentoring and working
11 with them. It is truly a blessing in a sense, a professional
12 blessing in a sense for both them and for us as well.

13 So, thank you for creating that.

14 *THE COURT:* You are very welcome. I want to let Judge
15 Reinhart make a comment or two if he'd like.

16 *THE MAGISTRATE JUDGE:* Yes, thank you, Judge
17 Rosenberg, I appreciate that.

18 Thank you to all the lawyers for their presentations.
19 I did listen in on the oral arguments earlier this week and I
20 always learn a lot listening to you. It also helps me today,
21 hearing kind of the bigger scope of the litigation, because I
22 know when issues come before me, it is always good to have a
23 context to understand what the parties' concerns are and how
24 those concerns arise.

25 So, what I really wanted to mention was, we are going

1 to be spending some more time together at least once a month
2 going forward, and I want those to be meaningful productive
3 meetings, not just one side coming in and complaining about the
4 other side and pointing fingers at each other, which happens
5 sometimes in litigation, I understand that.

6 But I want them to be productive working sessions
7 where perhaps we can look at bigger cutting edge issues or try
8 to anticipate things that are coming down the road. What I
9 wanted to invite the parties to do is, working through the
10 special master, communicate to me -- and you don't necessarily
11 have to agree on this -- communicate to me your vision of what
12 you think those hearings and those meetings should be, what we
13 should be trying to accomplish, what issues we should try to
14 bring up and what our goals should be.

15 I think if we have a sense of what we are shooting at
16 we can be more productive. So, I invite you to do that and to
17 pass that information to me through the special master so that
18 I can kind of conceptualize in my own mind how those hearings
19 are going to go.

20 The other thing I did want to take a second to do is
21 apologize to the parties. I did have to step off the call for
22 about 15 minutes. I don't know if Judge Rosenberg was able to
23 tell you, the reason I stepped off the call was, I got to do
24 the best job that I get to do in my position, and I think Judge
25 Rosenberg would probably agree.

1 The best thing we do, other than swearing in new
2 lawyers, is I got to make 12 new citizens today. At 11:30 I
3 swore in 12 new citizens, and I have to actually get off the
4 call in five minutes because I have 12 more waiting.

5 If you ever want to really be inspired, truly be
6 inspired and appreciate what this country is all about, please
7 go to a naturalization ceremony. As much as we all love our
8 country and appreciate our judicial system, our jury system,
9 all the benefits that America gives to us, go watch a bunch of
10 people become citizens and you will be humbled by how much we
11 take for granted.

12 So, on that patriotic note, I did want to thank you
13 all for your patience and apologize for stepping out. I want
14 to thank Judge Rosenberg for this opportunity. So, thank you.

15 *THE COURT:* Thank you, Judge Reinhart.

16 On that note, for the most part, the naturalization
17 ceremonies are being held on Zoom, so to the extent that
18 someone would like to take Judge Reinhart up on that, I am sure
19 he would welcome an invitation to have a link at a future
20 naturalization ceremony either through his chambers or mine, or
21 contact our special master and we can provide links so you have
22 an opportunity to watch it right from your home or desk, and
23 not travel to where they normally take place, which is in a
24 courthouse or sometimes off site when they are really large.

25 Yes, they are a very rewarding experience, almost as

1 rewarding as presiding over this MDL, but it is a close call.

2 I do want to say to those of you today and other days
3 who may have had some technological trouble, please don't beat
4 yourself up. Please don't worry about it. At the end of the
5 day, I was able to hear everybody today, maybe not see
6 everybody, and the same goes for Monday or Tuesday.

7 The last thing I want is for anybody to feel badly
8 because something didn't go right with the technology. One of
9 these days something is not going to go right on my end. So
10 far, so good. I just don't want anybody to be distraught about
11 that. Your message was conveyed, I heard everything I needed
12 to hear. I thank you.

13 I wish everybody the happiest, happiest of holidays.
14 Be well, be safe, enjoy. Please take time off. There will be
15 much more to do and to come in the new year with this case, but
16 I think it is necessary, it is healthy, and it is strongly
17 encouraged, and maybe I will say I am ordering it, that you
18 just take a break and enjoy your family and friends, and, of
19 course, be safe during times of holidays where people may
20 travel and new people come in and leave. We all know from
21 everything we are reading it heightens certain risks.

22 Be extra vigilant and I wish you all happy holidays
23 and I look forward to seeing you in the new year, and I thank
24 you again for all you have done to give me the honor and
25 professional satisfaction of presiding over a case that brings

1 to it such quality lawyering and heartfelt advocacy on behalf
2 of the positions and the clients and the issues that you are
3 charged with as attorneys in representing and bringing to the
4 Court. I thank you for that.

5 Good-bye, everybody. That concludes the proceeding.
6 *(Thereupon, the hearing was concluded.)*

7 * * *

8 I certify that the foregoing is a correct transcript
9 from the record of proceedings in the above matter.

10
11 Date: December 27, 2020

12 /s/ Pauline A. Stipes, Official Federal Reporter

13 Signature of Court Reporter
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Pauline A. Stipes, Official Federal Reporter

MR. AGNESHWAR: [5] 74/17 78/20 78/23 79/19 80/2 MR. BAYMAN: [2] 68/25 69/24 MR. GILBERT: [6] 68/21 69/10 81/7 82/17 86/25 91/19 MR. HENRY: [2] 24/25 27/7 MR. KAPLAN: [2] 62/13 67/4 MR. McGLAMRY: [7] 32/5 32/16 35/17 36/25 37/8 37/11 40/6 MR. PETROSINELLI: [5] 6/21 15/10 20/20 28/24 30/15 MR. PULASKI: [14] 6/18 7/10 10/21 13/13 13/16 15/9 27/19 30/3 30/10 62/7 62/20 67/21 83/6 84/14 MR. SACHSE: [3] 39/21 48/21 71/15 MR. YOO: [1] 55/1 MS. BOLDT: [2] 6/20 7/17 MS. COLEMAN: [1] 6/4 MS. DAILY: [4] 6/23 15/22 17/11 20/19 MS. FINKEN: [8] 44/23 48/17 54/17 54/20 54/25 57/25 61/25 66/12 MS. JOHNSTON: [5] 62/9 63/13 63/25 64/2 67/23 MS. LARMOND-HARVEY: [2] 87/11 91/15 MS. LUHANA: [4] 40/7 40/10 40/14 40/17 MS. PODSIADLO: [1] 75/6 MS. SHOWALTER: [11] 69/7 70/8 70/14 70/20 70/24 71/1 71/8 72/7 72/10 72/13 73/7 MS. WHITELEY: [2] 73/10 73/14 THE COURT: [77] 3/17 6/5 6/25 7/16 9/24 13/2 15/6 15/20 17/3 18/24 24/24 27/3 27/8 28/21 28/25 30/6 30/11 30/21 32/15 33/21 36/14 37/2 37/10 39/18 40/5 40/9 40/12 40/16 44/22 48/16 48/18 54/19 54/21 57/23 58/20 62/4 62/12 62/17 63/12 63/23 64/1 66/7 67/3 67/7 67/22 68/2 69/6 69/22 70/7 70/10 70/16 70/22 70/25 71/3 71/10 72/4 72/9 72/11 73/5 73/8 73/13 74/3 75/4 78/18 78/22 79/17 79/20 81/5 82/13 83/5 84/4 84/15 87/1 89/6 91/16 92/13 94/14 THE MAGISTRATE JUDGE: [2] 13/15 92/15 / /s [1] 96/12 0 0500 [1] 2/3 1 1,000 [1] 77/7	100,000 [1] 43/2 1001 [1] 3/6 10016 [1] 2/9 10019 [1] 3/3 1100 [1] 1/24 1113 [1] 2/10 1130 [1] 1/14 1180 [1] 2/19 119 [1] 2/2 11:30 [1] 94/2 11th [1] 42/5 12 [3] 94/2 94/3 94/4 127 [1] 38/7 12th [2] 2/9 2/23 13 [1] 42/1 130 [2] 1/13 2/16 15 [7] 16/14 26/2 26/12 41/16 66/6 78/2 93/22 15th [4] 54/15 62/23 63/5 63/18 16 [4] 12/4 25/10 28/1 42/1 1600 [2] 1/13 2/19 165 [1] 12/3 17 [1] 42/16 1725 [1] 1/16 17th [1] 64/18 18 [4] 1/5 18/3 28/1 42/11 18-month [1] 41/1 183 [5] 36/13 37/12 38/7 72/21 74/1 18th [3] 1/13 2/16 42/20 19103 [2] 1/13 2/17 19104 [1] 2/13 19th [1] 38/3 1st [4] 12/13 12/17 38/3 38/25 2 2,640 [1] 12/4 20 [6] 36/4 37/16 37/24 42/7 57/9 60/21 20-md-02924-ROSENBERG [1] 1/3 200 [1] 42/4 20004 [1] 3/6 20005 [1] 2/24 202-434-5567 [1] 2/24 202-624-2500 [1] 3/7 2020 [7] 1/5 41/9 41/11 46/1 72/24 73/2 96/11 2021 [5] 4/15 33/9 36/2 36/4 41/16 2029 [1] 3/12 20th [4] 36/12 36/13 41/15 71/21 21 [2] 73/2 75/23 210-448-0500 [1] 2/3 212-836-8011 [1] 3/3 213-896-2400 [1] 3/10 215-569-5644 [1] 2/17 215-735-1130 [1] 1/14 215-994-4000 [1] 2/14 21st [1] 26/21 22 [1] 25/15 23 [1] 25/9 23rd [1] 71/23 24 [1] 41/9 24/7 [1] 10/10	2400 [1] 3/10 24th [2] 41/19 41/19 25 [1] 16/18 250 [2] 3/2 16/19 2500 [1] 3/7 27 [2] 42/16 96/11 28 [1] 25/17 2800 [1] 1/23 2925 [1] 1/16 2929 [1] 2/13 29th [1] 72/20 2nd [5] 36/2 36/13 38/4 38/4 42/5 3 3,000 [1] 43/6 30 [24] 11/13 32/23 33/16 36/2 41/2 42/19 45/25 46/8 46/12 46/18 46/25 47/15 51/4 51/19 51/22 52/1 56/8 56/11 56/23 57/6 60/15 60/18 60/18 66/22 30,000 [2] 43/2 44/2 300 [2] 1/20 3/12 30309 [1] 2/20 30326 [1] 1/20 305-384-7270 [1] 1/25 30th [2] 21/24 41/14 31 [2] 41/10 55/25 310-284-3798 [1] 3/13 31st [5] 14/5 24/5 41/15 44/8 61/3 32 [2] 42/10 58/17 33134 [1] 1/24 3391 [1] 1/19 34,000 [1] 43/12 36 [1] 68/10 37 [1] 61/3 3798 [1] 3/13 38 [4] 16/14 16/20 42/6 42/7 3rd [1] 41/7 4 40,000 [2] 14/6 18/14 400 [4] 3/9 38/6 50/3 60/19 4000 [1] 2/14 404-523-7706 [1] 1/21 404-572-4600 [1] 2/20 42 [1] 77/1 44 [2] 32/25 37/22 45 [1] 47/5 4555 [1] 1/17 4600 [1] 2/20 47 [16] 32/24 38/1 40/22 40/25 41/7 41/14 42/20 42/21 42/23 43/7 43/12 43/19 44/9 59/23 61/3 61/12 49 [2] 32/25 38/2 4th [3] 26/22 41/25 42/15 5 5,000 [1] 43/18 50 [4] 8/1 11/21 77/25 86/7 50's [1] 5/5 50,000 [1] 44/3 504-524-5777 [1] 2/7 51 [2] 64/4 64/10 52 [3] 11/22 25/3 26/7
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